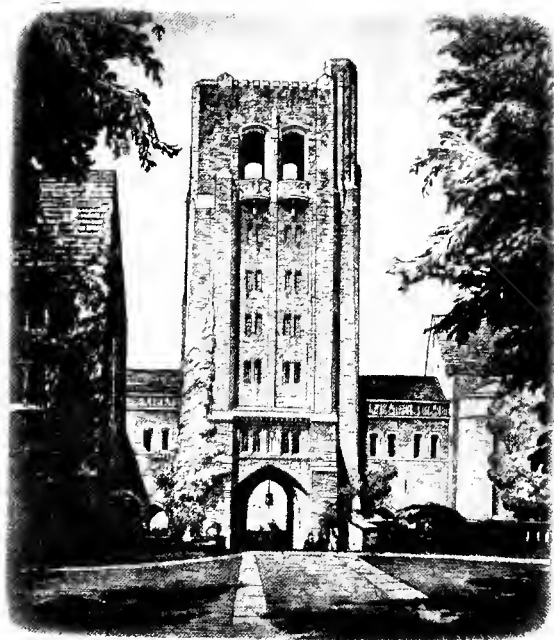


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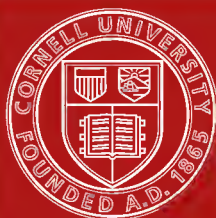
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GUARDIAN AND WARD

IN

PENNSYLVANIA.

BEING

THE SEVENTEENTH CHAPTER OF COMMENTARIES ON THE
LAWS OF PENNSYLVANIA.

BY

TATLOW JACKSON.

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PREFACE.

A NEW pamphlet only merits a preface when the author of it has some especial reason for giving it, and in this regard mine is the desire to acknowledge the assistance received by me from a manuscript on the subject of the appointment of guardians (awarded the Meredith Prize in 1881 by the Faculty of the Law Department of the University of Pennsylvania), written by Henry T. Dechert, Esq., of the Philadelphia Bar.

TO a considerable extent Sections I. and IV. of the chapter of the commentaries on the laws of Pennsylvania are taken from Mr. Dechert's essay.

In the compilation of "Commentaries on the Laws of Pennsylvania" the writer will thankfully accept and acknowledge aid from the members of the Pennsylvania Bar, or from any fellow-students of law in the Commonwealth.

TATLOW JACKSON,

May 20th, 1885.

520 Walnut Street,
Philadelphia.

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COMMENTARIES
ON THE
LAWS OF PENNSYLVANIA.

BY TATLOW JACKSON.

BOOK THE FIRST.

CHAPTER SEVENTEENTH.

OF GUARDIAN AND WARD.

THE only general private relation now remaining to be discussed is that of guardian and ward, which bears a very near resemblance to the last, and is plainly derived out of it, the guardian being only a temporary parent, that is, for so long a time as the ward is an infant, or under age. 1 Blackstone's Commentaries, 460. A guardian is one appointed by the wisdom and policy of the law to take care of a person and his affairs, who, by reason of his inability and want of understanding, is incapable of acting for his own interests. 3 Bacon's Abridgment, 401.*

In examining this species of relationship, so far as it relates to the guardianship of minors, we will proceed to consider, as follows :

* The 6th section of the Act of 29th March, 1832, Pamphlet Laws, 191, provides that "No executor or administrator shall be admitted or appointed by the Orphans' Court guardian of a minor having an interest in the estate under the care of such executor or administrator: *Provided*, That nothing herein contained shall be construed to extend to the case of a testamentary guardian." —See, also, Rules of the Orphans' Court of Philadelphia of 1883.

- (1.) The different kinds of guardians.
 - (2.) The different ages of the minors for whom guardians are appointed.
 - (3.) The privileges and disabilities of minors under the control of guardians.
 - (4.) Of the appointment and discharge of guardians.
 - (5.) Of the powers, duties, and rights of guardians.
 - (6.) Of the surety on the guardian's bond.
 - (7.) Of the acquisition, mortgaging and sale of minors' property.
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FIRST.

SECTION I.

Of the Different Kinds of Guardians.

I. Derived from the common law,* to wit:

- (1.) Guardian by nature. Coke upon Littleton, 88.
- (2.) Guardian by nurture. Ibid.
- (3.) Guardian in socage. Ibid.
- (4.) Guardian in chivalry; abolished by statute 12 Charles II., chapter 24; Roberts's Digest, 312.

II. Derived from statute law.

- (1.) Testamentary guardian.
 - 1st. Appointed by the father under statute 12 Charles II., chapter 24, and Act of 8th April, 1833, Pamphlet Laws, 245.
 - 2d. Appointed by the mother under Act of June 10, 1881, Pamphlet Laws, 96.
- (2.) Guardians appointed by the Orphans' Court direct, as follows:
 - 1st. Under 5th and 7th sections of Act of 29th

* These guardianships were engrafted on the common law either from the civil law or from the feudal system.

March, 1832, Pamphlet Laws, 190—revising former acts.

2d. Under 44th section of Act of 25th April, 1850, Pamphlet Laws, 576.

3d. Under 3d section of Act of 4th May, 1855, Pamphlet Laws, 430.

4th. Under 1st section of Act of 25th August, 1864, Pamphlet Laws, 1029.

5th. Under 7th section of Act of 11th June, 1879, Pamphlet Laws, 142.

III. Guardians appointed or accepted by the inherent power of courts of law, and recognized by statute law.

(1.) Guardian *ad litem*.

(2.) Guardian as *prochein ami pro hac vice*.*

NOTE.—As the estate of a minor generally passes into the control of his guardian from that of an executor or administrator, it may interest the student to know the definitions of these officials, whose duties will be set forth in the second book of these Commentaries, in chapter 32d. An executor is he to whom another man commits by will the execution of that his last will and testament. 2 Blackstone's Commentaries, 503. An administrator is a person authorized to manage and distribute the estate of an intestate, or of a testator who has no executor. 1 Bouvier's Dictionary, 119.

I. Of guardians at common law.

(1.) The guardian by nature.

This guardianship, according to the strict language of English law, only applied to the wardship of the heir apparent. It seems that not only the father but also the mother and every other ancestor may be guardians by nature, though with considerable differences, such as de-

* A *prochein ami* is but a species of attorney, who may prosecute a right for an infant but can do nothing to operate to his injury, and therefore cannot release or compromise a suit prosecuted on behalf of a minor. *Isaacs v. Boyd*, 5 Porter, 388.

note the superiority of the father's claim. The father hath the first title to guardianship by nature, the mother the second, and as to other ancestors, if the same infant happens to be heir apparent to two, as to both a paternal and a maternal grandfather, perhaps, in this equality of rights, priority of possession of the infant's person may decide the preference. 1 Thomas's Coke, 154. This guardianship only lasts while the natural obligations of maintenance, protection, and education continue, viz., to the age of twenty-one years, and only extends to the custody of the person of the child. Coke upon Littleton, 84 a; *The King v. Thorp*, 5 Modern, 221. However, as in Pennsylvania the heir apparent has but equal rights with the other heirs, it may be said that the guardianship by nature extends to all the heirs, particularly when, as stated by Sir William Blackstone, the position "arises out of the natural relation existing between parent and child, and its duties and obligations are consecrated by the natural affections of the parties." Moreover, when there be a contest for the guardianship of the minor between the father and the mother, the courts will ignore the English common law on the subject, and will assign the guardianship to which either parent the court may deem best adapted to fulfil such office. *Commonwealth v. Hart*, 8 Weekly Notes of Cases, 156. The mother is the guardian by nature if the child be illegitimate: *Commonwealth v. Fee*, 6 Sergeant & Rawle, 255; *McGunigal v. Mong*, 5 Barr, 269; and as a general rule the putative father is entitled to its custody against all but the mother: *Commonwealth v. Anderson*, 1 Ashmead, 55.*

(2.) Guardian by nurture.

As to this guardianship, it only occurs where the infant is without any other guardian, and none can have it except the father and the mother. 1 Thomas's Coke, 156.

* But the guardian of the bastard is entitled in preference to the putative father: *Commonwealth v. Waleiser*, 2 Legal Chronicle, 305.

It extends no further than the custody and government of the infant's person, and determines at fourteen in the case of both males and females; and in Pennsylvania if there be any distinctive difference between it and guardianship by nature, this is, that the guardianship by nature extends to twenty-one years and that of nurture to fourteen. The guardianship by nurture may be said to have merged into that by nature in Pennsylvania, and the same may be said of guardianship by socage, if our tenures be allodial, as decided by Judge Woodward in the case of *Wallace v. Harmstad*, 8 Wright, 498. See, also, remarks on this subject in the introduction to Jackson and Gross on the Law of Landlord and Tenant in Pennsylvania. Where there be a contest over the guardianship of a minor, our courts will exercise supreme control as representing the Commonwealth as *parens patriæ*. See, on this subject, the cases of *Commonwealth v. Gilkeson*, 5 Clark's Cases, 32; *Commonwealth v. Hart*, 8 Weekly Notes of Cases, 159; *Pratt's Case*, 1 Legal Gazette Reports, 56; *Commonwealth v. Demot*, 7 Philadelphia, 624; *Commonwealth v. Addicks*, 5 Binney, 520; *Commonwealth v. Smith*, 1 Brewster, 547.

(3.) Guardian in socage.

This guardianship arises as follows: "In tenures in socage, if the tenant have issue and die, his issue being within the age of fourteen years, then the next friend of that heir, to whom the inheritance cannot descend, shall have the wardship of the land and of the heir until the age of fourteen years, and such guardian is called guardian in socage." Coke upon Littleton, 87 b. This guardianship cannot exist in Pennsylvania, for the following reasons:

1st. Because our tenures have been decided to be allodial. See Jackson and Gross on the Law of Landlord and Tenant in Pennsylvania, Introduction.

2d. Because the heir at common law inherits no more under the intestate act than the other children ; though this is not conclusive, as there may be but one heir.

3d. Because, under the eleventh section of the Intestate Act of 1833 (which provides as follows :

“And, whereas, it is the true intent and meaning of this act, that the heir at common law shall not take in any case to the exclusion of other heirs and kindred standing in the same degree of consanguinity with him, to the intestate, it is hereby declared that in every case which may arise, not expressly provided for by this act, the real as well as the personal estate of an intestate shall pass to and be enjoyed by the next of kin of such intestate, without regard to the ancestor or other relative from whom such estate may have come”)

there is no next of kin to whom the inheritance cannot descend. But, in regard to this relation, see Graham's Appeal, 1 Dallas, 136, decided in 1785, when the heir at common law was entitled to a double portion in the settlement of the estate of an intestate father ; also, Arthur's Appeal, 1 Grant, 57, which was decided subsequent to the intestate act of 1833.

(4.) Guardian in chivalry.

As this guardianship was extinguished by statute of 12 Charles II., chapter 24, Roberts's Digest, 312, enacted A.D. 1660, it never did exist in this commonwealth ; therefore, there need nothing be said of it more than to sketch its incidents.

“This wardship consisted in having the custody of the body and lands of such heir, without any account of the profits, till the age of twenty-one in males and sixteen in females. For the law supposed the heir male unable to perform knight service till twenty-one ; but as for the female, she was supposed capable at fourteen to marry, and then her husband might perform the service. The lord, therefore, had no wardship, if at the death of the ancestor the heir male was of the full age of twenty-one, or the heir female of fourteen ; yet if she was then under fourteen, and

the lord once had her in ward, he might keep her so till sixteen, by virtue of the Statute of Westm., 3 Edward I., c. 22, the two additional years being given by the legislature for no other reason but merely to benefit the lord." See 2 Blackstone's Commentaries, 67.

The guardianship, even had it not been abolished by statute, would have become extinct in Pennsylvania as the result of our intestate laws causing the inheritance to fall equally on all the children, share and share alike.

After reviewing the foregoing mentioned common law kinds of guardianship, I think that we may conclude the only one now extant in Pennsylvania is that of guardian by nature extended to all the legitimate children and not confined to the heir apparent, whose legal existence no longer survives under the intestate laws, and we may say this guardianship exists from the relative position of parent and child, even did it not exist at common law.

The rights of the father and mother are, however, qualified by the third section of the Act of May 4, 1855, Pamphlet Laws, 430, which declares that when the father, from drunkenness, profligacy, or other cause, refuses or neglects to provide for his child or children, the mother shall exercise the parental rights and duties, provided that she "afford to them a good example and properly educate and maintain them according to her ability," and by the Act of June 11, 1879, Pamphlet Laws, 144, "to protect children from neglect and cruelty," etc., which, after prohibiting the cruel treatment of minors or the employment of them in certain vocations, retaining them in brothels, hiring them for purposes of mendicity, employing them in liquor or dancing saloons, or certain of them in mines, provides in section 7 that

"Whenever any person having the custody or control of any minor shall be convicted of a violation of any of the provisions of this act, it shall be lawful for any person to apply to the Orphans' Court of the county wherein the offence

has been committed, for the appointment of a proper guardian for the person of such minor; and the said court may in its discretion make such appointment, having due regard in the selection of such guardian to the religious persuasion of the parent or former guardian, or it may place such child in an asylum or home for children, with the powers of a guardian of the person as may be most expedient," etc.

The act further provides for the adoption of children deserted by their parents, and provides for the punishment of parents or guardians who have committed a breach against the provisions of the act.

In section 12 it provides that

"Whenever the parents or proper guardians of any infant unable to support itself, have been convicted of any of the offences enumerated in this act, or are dead or cannot be found, and there is no other person legally responsible for the maintenance and support of such child, willing to assume such support, or to be found within the county, any magistrate or court of record of the county in which such child may be found, may commit such child to the care and custody of the guardians of the poor of the said county, but nothing herein contained shall exempt any person from the duty of maintaining and supporting such child as now imposed by law."

In questions relating to the custody of minor children after abandonment by the parents, the following principles of general application have been acted on by the Court of Quarter Sessions in Philadelphia.

1st. A parent may relinquish the care, custody, and control of his child, and after having done so, his right to claim it is gone and will not be enforced by the court.

2d. Such relinquishment by the parent of a child may be by deed or other instrument in writing; or it may be by parol, or by abandonment; by turning it out of the house and permitting it to go upon its own resources; and such relinquishment or abandonment may be presumed from the acts of the parents.

3d. When the rights of the parents are not clear, the court will regard the interests of the child, and when of sufficient age its wishes will be consulted. See *Commonwealth v. Dougherty*, 1 Legal Gazette Reports, 64, and

authorities therein cited; Commonwealth v. St. John's Orphan Asylum, 9 Philadelphia, 572.

II. Of guardians by statute law in Pennsylvania.

These may be divided into two classes :

(1.) The one "testamentary guardians" are those appointed by the parent in accordance with the authority granted by certain statutes, viz. :*

1st. By the father, under statute of 12 Charles II., chapter 24, s. 8, Roberts's Digest, 312; and Act of 8th April, 1833, Pamphlet Laws, 249, which latter provides that

"Every person competent to make a will as aforesaid, being the father of any minor child unmarried, may devise the custody of such child during his or her minority, or for any shorter period."

Those competent to make a will as aforesaid under the first and third sections of the act are those of sound mind (married women excepted) who are over twenty-one years of age at the time of making their wills. Though the "custody" of the child is referred to in our act, the unquestioned practice is to follow the English provision, in statute 12 Charles II., chapter 24, which is that the testamentary guardian shall have also the custody of the infant's estate both real and personal.

2d. By the mother, under Act of June 10, 1881, Pamphlet Laws, 96, which provides :

"SECTION 1. That every mother of an unmarried minor child, who shall leave to such child an estate, either in lands or chattels, may appoint a testamentary guardian for such child : *Provided*, That the father be not living, or, being deceased, he has not appointed such guardian.

"SECTION 2. Every mother, who, by her deceased husband's will, has been appointed testamentary guardian of her children, may by her last will appoint a successor in such guardianship."†

* By the common law of England none could appoint a guardian. Ratcliffe Case, 3 Coke, 37.

† See further as to testamentary guardian Roberts's Digest, 2d edition, 325.

(2.) The other “guardians appointed by the Orphans’ Court” under the provisions of our statute law.

1st. Under the provisions of the Act of 29th March, 1832, Pamphlet Laws, 191, which provides as follows :

“SECTION 5. The Orphans’ Court of each county shall have the care of the persons of minors resident within such county, and of their estates, and shall have power to admit such minors when and as often as there shall be occasion to make choice of guardians, and to appoint guardians for such as they shall judge too young or otherwise incompetent to make choice for themselves: *Provided*, That persons of the same religious persuasion as the parents of the minors shall in all cases be preferred by the court in their appointment.”

The court has not jurisdiction of a petition for the appointment of a guardian while there is a testamentary guardian who has neither resigned nor been removed, and its appointment under such circumstances would be a nullity; there could not be a double set of guardians acting by color of authority, but in opposite rights and deriving title from inconsistent sources, for to hold the acts of the one to be good in the first instance, and those of the other to be good altogether, would lead to collision and irrevocable confusion. *Robinson v. Zollinger*, 9 Watts, 169. A second appointment of a guardian while a former one remains unrevoked is void. *Estler v. Estler*, 1 Browne, 322; see, also, *Vanartsdalen v. Same*, 2 Harris, 384.

The Orphans’ Court may at its discretion appoint foreign guardians, under the 7th section of the Act of 29th March, 1832, Pamphlet Laws, 191, as follows :

“No appointment of a guardian, made or granted by any authority out of this State, shall authorize the person so appointed to interfere with the estate, or control the person of a minor in this State: *Provided*, That such foreign guardian may, at the discretion of the court, be appointed by the Orphans’ Court, having jurisdiction, on giving security for the due performance of his trust.”*

And the Act of 21st April, 1856, Pamphlet Laws, 495, provides in the first section that

* This section was amended by the 3d section of the Act of 14th April, 1835, P. L., 275—the 3d section of the Act of 16th June, 1836, P. L., 682; see also Act 17th May, 1871, P. L., 269, *infra*.

"In all cases where any guardian and his ward may both be non-residents of this State, and such ward may be entitled to property of any description in this State, such guardian, on producing satisfactory proof to the Orphans' Court of the proper county, by certificates, according to the Acts of Congress in such cases, that he has given bond and security in the State in which he and his ward reside, in double the amount of the value of the property, as guardian, and it is found that a removal of the property will not conflict with the terms or limitations attending the right by which the ward owns the same, then any such guardian may demand or sue for and remove any such property to the place of residence of himself and ward."

The 2d section of the act provides that when such non-resident guardian produces an exemplification of his appointment authenticated as provided by the act, the domestic guardian may be discharged.

The Act of 25th May, 1871, Pamphlet Laws, 279, provides how the Orphans' Court may authorize an executor, administrator, or guardian in the State to make payment to guardians appointed to minors outside of the State.

2d. Under the provisions of the 44th section of the Act of 25th April, 1850, Pamphlet Laws, 576, as follows:

"The Orphans' Court of each county in this commonwealth shall have power to appoint guardians of the estates of minors residing out of the commonwealth, in all cases where such minors are possessed of estates lying within the jurisdiction of said court, upon the petition of the minors, or any of their relatives or friends, or any person interested in such estates, without requiring the said minors to appear in court to make choice of such guardians."

3d. Under the provisions of the 3d section of the Act of 4th May, 1855, Pamphlet Laws, 430, when the father neglects or refuses to provide for his children and the mother is dead or of unsuitable character to be intrusted with the parental rights and duties, the "proper court" may appoint a guardian of such children who shall perform the duties of the parents and apply the earnings of the children for their maintenance and education.

4th. Under the provisions of the 1st section of the Act of 25th August, 1864, Pamphlet Laws, 1029, as follows:

"The Orphans' Court, of each county, shall have power to appoint guardians of the persons and estates of minors, who may be absent in the service of the United States, or who may be physically unable to appear and choose for themselves, or who may be so far distant from the seat of justice of the county, as to make it unnecessarily expensive for them to appear, upon the petition of the minors, without requiring the minors to appear in court, to make choice: *Provided*, That when the appointment shall be made on petition of relatives or friends, the minor may subsequently appear and choose his guardian, as in case of one attaining the age of fourteen.

A guardian has in some cases no power to change the domicile of his ward: *School Directors v. James*, 2 Watts & Sergeant, 568.

5th. Under the provisions of the 7th section of the Act of 11th June, 1879, Pamphlet Laws, 142, entitled, "An act to protect children from neglect and cruelty, and relating to their employment, protection, and adoption," as follows:

"Whenever any person having the custody or control of any minor, shall be convicted of a violation of any of the provisions of this act, it shall be lawful for any person to apply to the Orphans' Court of the county wherein the offence has been committed for the appointment of a proper guardian for the person of such minor; and the said court may, in its discretion, make such appointment, having due regard in the selection of a guardian to the religious persuasion of the parents or former guardians, or it may place such child in an asylum or home for children, with the powers of a guardian of the person as may be most expedient: *Provided, however*, That the children of Roman Catholic parents shall be placed in asylums under the control and care of that denomination; and the said court may order the parent to pay such a reasonable sum toward the maintenance of such child, and at such times and in such amounts, as the said court may see fit; and such courts may at any subsequent time, upon being satisfied that the parent has become a fit person to resume the custody of said minor, and upon reasonable security, to be fixed by the court, being given for the faithful observance of the provisions of this act, remand such minor to the custody of such parent, subject, nevertheless, to the obligation of any indentures or legal engagements already entered into on behalf of said minor by his or her guardian."

This act repealed the Act of 24th May, 1878, Pamphlet Laws, 119.

III. Of guardians *ad litem*, or guardians appointed by the inherent powers of any of our courts at law and recognized by our statute law.

(1.) The guardian *ad litem*.

All courts of justice have a power to assign a guardian to an infant, to sue or defend actions if the infant comes into court and desires it, or a judge at his chambers, at the desire of the infant, may assign a person named by him as guardian. Fitzherbert's *Natura Brevium*, 27.

The power to appoint such guardian *ad litem* was given specifically to the Orphans' Court by the 7th section of the Act of 27th March, 1713, 1 Smith's Laws, 81, as follows:

"That the justices of the said Orphans' Court in the said respective counties shall, by virtue of this act, have full power and authority to exercise all the powers, authorities, and jurisdictions, granted or mentioned, or intended to be granted to the Orphans' Court, in and by a law of this province, entitled, *An act for better settling of intestates' estates*, and to do, execute, and perform all such matters and things as the Orphans' Court, in the said act, or in any other act or law of this province mentioned, might or ought to have done or performed, according to the true intent and meaning thereof; with power also to admit orphans or minors, when and as often as there may be occasion to make choice of guardians or tutors, and to appoint guardians, next friends, or tutors, over such as the said court shall judge too young or incapable, according to the rules of the common law, to make choice themselves; and at the instance and request of the said executors, administrators, guardians, or tutors, to order and direct the binding or putting out of minors apprentices to trades, husbandry, or other employments as shall be thought fit. And that all guardians and *prochein amis* which shall be appointed by any of the said Orphans' Courts shall be allowed and received, without further admittance, to prosecute and defend all actions and suits relating to the orphans or minors, as the case may require, in any court or courts of this province."

And is reiterated in the 53d section of the Act of 29th March, 1832, Pamphlet Laws, 207; and in real actions where the minor is defendant, the Act of 13th June, 1836, Pamphlet Laws, 587, in sections 83 and 84, provides as follows:

"But in every case in which any such defendant shall not have a guardian as aforesaid, it shall be the duty of the plaintiff upon or after the day on which he might take judgment by default against such minor, if he were of full age, and before any plea pleaded, or rule taken in the action, to make application to the court in which such action shall be brought, for the appointment of a guardian of such minor in that cause, if such minor shall not have appeared

by his guardian as aforesaid, and such appointment being made, he shall give notice thereof to the person appointed.

"The court which shall appoint a guardian *ad litem* of a minor, defendant in any cause, shall have power to require security of such guardians for the faithful execution of the trust, and in all cases, whether such security shall be given or not, such guardians shall be responsible to their wards, in like manner as guardians appointed by the Orphans' Court, and they shall also be entitled to a reasonable compensation for their services."

Moreover, when it is believed to be to the interest of a minor to have his real estate sold and there be no guardian of such in the county in which the land lies, the Act of 3d April, 1851, Pamphlet Laws, 306, in section 4, provides for a guardian for such minor as follows:

"Every application for the sale of lands under any of the provisions hereof shall be in the form of a petition, and shall set forth a sufficient description of such lands and the names of the persons interested in the same; and where any of them shall be minors, having no guardian residing in the county in which the lands lie, it shall be the duty of the court to appoint some suitable person or persons to guard the interests of said minors: *Provided*, That if such minors shall appear upon the day of hearing before mentioned, by guardian, *prochein ami*, or next of kin, such appointment shall be null and void."

It is seen by the foregoing that no guardian *ad litem* can be appointed by any court when there is a guardian already in existence, unless that guardian be absent from the county wherein such lands lie, in cases of application for the sale of the lands. See *Mercer v. Watson*, 1 Watts, 350. Moreover, no court has authority to appoint a guardian *ad litem* without first giving notice to the minor or to his next friend as provided by Act of 13th June, 1836, section 83, Pamphlet Laws, 587, and Act of 29th March, 1832, section 53, Pamphlet Laws, 207. And a judgment against the estate of a ward without such notice is void. *Swain v. Fidelity Insurance Company*, 4 P. F. Smith, 455.* Judge Gibson, in the case of *Turner v. Patridge*, 3 Penrose & Watts, 173, defines the difference between a *prochein ami* and a guardian *ad litem* to be

* *Graham's Estate*, 14 Weekly Notes, 31.

that "the former is the curator of an infant plaintiff and the latter of an infant defendant."

(2.) Guardian as by *prochein ami*, who is a guardian accepted by the courts in cases where the minor is plaintiff.

At common law infants could neither sue nor defend except by guardian. Fitzherbert's *Natura Brevium*, 27. This law, however, might act to the prejudice of the minor by the refusal or neglect of the guardian to act, and to remedy this the statute of 13 Edward I., chapter 15, Roberts's Digest, 317, in force in Pennsylvania, was passed, by which it was provided that

"In every case wherein such as be within age may sue, it is ordained, That if such within age be eloigned so that they cannot sue personally, their next friends shall be admitted to sue for them."

Although the word "eloigned" be in the statute, yet by construction this circumstance is not deemed requisite and the *prochein ami* may sue whether the minor be eloigned or not. 2 Institutes, 390. And it has been held that it was not requisite that the *prochein ami* should be appointed by the court. See *Archer v. Frowde*, 1 Strange, 304. But Judge Gibson, in the case of *Turner v. Patridge*, 3 Penrose & Watts, 172, held that a *prochein ami* is recognized by the laws of Pennsylvania and in our practice, but never as having the power of a trustee and guardian. It was held in *Heft v. McGill*, 3 Barr, 264, that an infant might bring an action of ejectment in the name of his next friend.

An infant (defendant) cannot appear to an action by her next friend. *Swain v. Fidelity Insurance Company*, 4 P. F. Smith, 455.

Infants are, by the rules of the common law, divided into two classes, those under the age of fourteen and those of that age and upwards, this being considered the age of discretion. They, if they have no testamentary

guardians, have a right to come into the Orphans' Court of the county of which they are resident,* and have guardians appointed to take care of their persons and estates. If under fourteen, they petition the court by some friend or relative, and upon such petition the court is authorized to appoint one or more suitable persons, as before said. But when the minor is of the age of fourteen or upwards he comes into court personally and has his petition presented and selects for himself the person whom he wishes to be his guardian, and the court appoints. *Arthur's Appeal*, 1 Grant, 57.

The court acts in two cases :

1st. In appointing for those who are incompetent to make a choice, from being under the age of fourteen, or imbecile.

2d. In confirming the choice, if it be a proper one, of those who are competent to make a choice, being minors over the age of fourteen.

When the court appoints a guardian for a minor under the age of fourteen, the minor, when he arrives at that age, may appear in court and choose another guardian ; but if no such choice be made, the authority of the guardian first appointed will continue until the infant arrives at the age of twenty-one years. *Lee's Appeal*, 3 Casey, 229.

The Supreme Court will not review the discretion exercised by the Orphans' Court in the appointment of a guardian. *McCann's Appeal*, 13 Wright, 304 ; but see *Vanartsdalen v. Same*, 2 Harris, 384. Moreover, the father if alive ought to be notified (if within the jurisdiction) of the proceedings for the appointment of a guardian for his child. *Senseman's Appeal*, 9 Harris, 331.

* The words "of the county" are confined to the county in which the minor resides. *Packer's Estate*, 1 Legal Gazette, 5 ; *Ralston's Estate*, 3 Weekly Notes of Cases, 392.

SECOND.

SECTION II.

Of the Different Ages of the Minors for whom Guardians are appointed.

Let us next consider the ward or person within age for whose assistance and support these guardians are constituted by law, or who it is that is said to be within age. The ages of male and female are different for different purposes. 1 Blackstone's Commentaries, 463.

We have in Pennsylvania, in relation to minors, no legislative acts regulating this subject excepting those of 25th August, 1864, Pamphlet Laws, 1029, and 29th March, 1832, Pamphlet Laws, 208, but in Lee's Appeal, 3 Casey, 232, it is said by the court that "the practice has prevailed to appoint guardians for minors under the age of fourteen, and to admit those over that age to choose for themselves, subject of course to the supervision of the Orphans' Court, for the purpose."

The law relative to age in England in the time of Sir William Blackstone was as follows :

As to the male.

(1.) At 12 years of age he might take the oath of allegiance.

(2.) At 14 years of age had arrived at years of discretion, and therefore might consent or disagree to marriage, might choose his guardian, and, if his discretion be actually proved, might make his testament of his personal estate.

(3.) At 17 he might be an executor.

(4.) At 21 is at his own disposal, and may alien his lands for goods and chattels.

As to the female.

(1.) At 7 years of age she might be betrothed or given in marriage.

(2.) At 9 years of age was entitled to dower.

(3.) At 12 was at years of maturity, and might consent or disagree to marriage, and if proved to have sufficient discretion might bequeath her personal estate.

(4.) At 14 was at years of legal discretion and might choose a guardian.

(5.) At 17 might be executrix.

(6.) At 21 might dispose of herself and of her lands.

So that full age in male and female is twenty-one years, which age is completed on the day preceding the anniversary of a person's birth, who until that time is an infant and so styled in law. 1 Sharswood's Blackstone's Commentaries, 463, note.

The English law on this subject is in force so far as it is applicable to our circumstances. See Act 28th January, 1777, 1 Smith's Laws, 429.

We have seen that by our laws in regard to apprenticeship the term of service of a female expires at the age of eighteen and of a male at twenty-one. See Act 29th September, 1770, 1 Smith's Laws, 309.

In case of the marriage of a female infant ward, the duties of her guardian as regards the custody of the person cease, being transferred by operation of law to her husband. Cummings's Appeal, 1 Jones, 272. But the marriage of an infant male ward does not terminate the guardianship so far as relates to the custody of the ward's estate. Reeve's Domestic Relations, 328.

THIRD.

SECTION III.

Of the Privileges and Disabilities of Minors under the Control of Guardians.

Infants have various privileges and various disabilities ; but their very disabilities are privileges, in order to secure them from hurting themselves by their own improvident acts. 1 Blackstone's Commentaries, 464.

If an infant be sued he must appear to defend by his guardian, and if he have none the court will appoint a guardian *ad litem* to appear for him and defend his cause.

If he wish to institute a suit, and have no guardian, he may bring the suit in the name of a next friend, *prochein ami*, who is to him rather an attorney than a guardian. Isaacs v. Boyd, 5 Porter, 358.

He is liable, however, for his personal torts. McGhee v. Williams, 31 Legal Intelligencer, 37. He is liable in trover. Vasse v. Smith, 6 Cranch, 226. See also, in regard to further liabilities, Towne v. Wiley, 23 Vermont, 355.

With regard to estates and civil property an infant hath many privileges, thus—

(1.) The deed of an infant *feme covert* regularly acknowledged is void. Shrader v. Decker, 9 Barr, 14.

(2.) An infant cannot bind himself for a loan of money to make repairs to his estate. West v. Gregg, 1 Grant, 53.

(3.) A warrant of attorney to confess judgment given by an infant is void. Knox v. Flack, 10 Harris, 337 ; Small v. Murphy, 1 Luzerne L. R., 332.

(4.) A judgment confessed by an infant is void. *Etter v. Curtis*, 7 Watts & Sergeant, 170.

(5.) A contract as surety entered into by an infant is void. *Curtin v. Patton*, 11 Sergeant & Rawle, 305.

It is generally true that an infant can neither alien his lands, nor make a valid deed of his estate, nor any manner of contract that will bind him, but to this rule there are some exceptions. 1 Blackstone's Commentaries, 465.

(1.) He may in Pennsylvania enter into the bonds of matrimony.

(2.) He may at the age of fourteen choose a guardian.

(3.) He may bind himself for necessaries. *Commonwealth v. Hantz*, 2 Penrose & Watts, 333; *Hughes v. Gallans*, 3 Legal Intelligencer, 349. But not when he has a guardian or father to supply his wants. *Guthrie v. Murphy*, 4 Watts, 80. See also *Rundel v. Keeler*, 7 Watts, 239; *Watson v. Hensel*, *Ibid.*, 344; *Johnson v. Lines*, 6 Watts & Sergeant, 80; *Mohney v. Evans*, 1 P. F. Smith, 80.

(4.) He may appear to a suit by a guardian. *Moore v. McEwen*, 5 Sergeant & Rawle, 373. But not by an attorney. *Ibid.*

(5.) He may bring suit in court by a *prochein ami*. *Heft & Hix v. McGill*, 3 Barr, 256.

The contracts made by infants are generally voidable and not void—they bind the party the infant contracts with, but not necessarily the infant.

If they are void, the opposite party would not be bound by them, but being only voidable, at the option of the infant when he becomes of age, the one party is absolutely bound and the other is not, contrary to the general principles of law. *Smith v. Bowen*, 1 Modern Reports, 25; *Holt v. Clarincien*, *Strange*, 937; *Brown v. Caldwell*, 10 Sergeant & Rawle, 114. And no one but the infant

himself, or his legal representatives, can avoid his contracts. *Vanbramer v. Cooper*, 2 Johnson's Reports, 279; *Jackson v. Todd*, 6 Ibid., 257; *Oliver v. Houdlet*, 13 Massachusetts Reports, 237. And except where the nature of the case proves it, to avoid an act, there should be some unequivocal act of assent. *Curtin v. Patton*, 11 Sergeant & Rawle, 305.

It is not well settled what acts are absolutely void and what only voidable, the general rule being that when it may be for the benefit of the infant it shall not be considered void. *Whitney v. Dulch*, 14 Massachusetts Reports, 457.

When it is manifested to the court that a contract is to the prejudice of the infant, it may be pronounced void; but when it is uncertain, and depends upon circumstances, whether it will turn out to be the one way or the other, the infant is entitled to the benefit of the chance, and in such cases it must be considered only as voidable. See *United States v. Bainbridge*, Mason's Reports, 82; *McGaw v. Marshall*, 7 Humphrey, 121.

The exemption from liabilities on contracts does not extend to cases arising *ex delicto*, after the infant has arrived at the years of discretion. *Jennings v. Randall*, 8 Term Reports, 335. Or even at the age of seven. *McGhee v. Williams*, 31 Legal Intelligencer, 37.

The reason is apparent; because in cases of contract, the act proceeds from the voluntary assent of the opposite party; if he had not assented to the contract, it could never have been made; but in cases of torts and trespass, the infant is the sole aggressor, and has no one with whom he can share the responsibility. In such cases, the policy of the law and safety of society require, that if he have the means, he shall make compensation for wanton injuries done by him. All who deal with an infant are bound

to know the fact of his infancy. *Ruchizky v. De Haven*, 1 Outerbridge, 202.

The remedy of a ward against his guardian is by summary proceedings in the Orphans' Court, by citation and attachment to compel a settlement of his accounts. And after the termination of the wardship, by action of debt or assumpsit in the usual form for the balance found due upon such settlement. When a guardian has been removed the Orphans' Court may compel him to pay over to his successor all his ward's estate.

The Act of 27th March, 1833, Pamphlet Laws, 99, provides that :

"In all cases where the guardian of a minor is or shall be a party to a suit, either before a justice of the peace or in the Common Pleas, such guardian shall be allowed to appeal from the judgment of such justice, and from the award of arbitrators, without making the usual affidavit, and without giving surety, or paying costs."

FOURTH.

SECTION IV.

Of the Appointment and Discharge of Guardians.

(1.) As to the power to appoint vested in the father of the minor.

The statute of 12 Charles II., chapter 24, Roberts's Digest, 312, provided that any father, whether an infant or of full age, might, by deed executed in his lifetime, or by his last will and testament, dispose of the custody and tuition of his child either born or unborn, to any person or persons in possession or remainder other than popish recusants, such custody to last till the child attained the age of twenty-one, or for any less period, and to comprehend,

meantime, the entire management of his estate, both real and personal. The Act of 8 April, 1833, Pamphlet Laws, 249, provides that all persons of sound mind (married women are excepted) may dispose by will of their estate, also that a married woman may dispose of her estate by will, and also that no will shall be effectual unless the testator be of the age of twenty-one years; and in section 4, that :

“Every person competent to make a will as aforesaid, being the father of any minor child unmarried, may devise the custody of such child during his or her minority, or for any shorter period.”

But this power of appointment by the father is taken away by the Act of 4 May, 1855, Pamphlet Laws, 430, when he has for one year or upwards prior to his death, from drunkenness, profligacy, or other cause, neglected or refused to provide for his child or children.

An appointment by a guardian appointed by the father is void, for the guardianship is a personal trust and is not assignable. *Bedell v. Constable*, Vaughan, 179; *Mellish v. Da Costa*, 2 Atkyns, 15.

(2.) As to the power to appoint vested in the mother of the minor.

Prior to 1881, the mother had no legal right to appoint a guardian for her minor children. See *Darmody's Estate*, 6 Weekly Notes of Cases, 487; *Colehower's Estate*, 5 Weekly Notes of Cases, 343. But when a mother left an estate to her children and appointed an executor to act also as guardian to the minors, the Orphans' Court decided not to regard such an appointment as a nullity, regarding the word guardian in the signification of trustee. *Colehower's Estate*, 5 Weekly Notes of Cases, 343.

In the case of *Vanartsdalen v. Vanartsdalen*, 2 Harris, 384, a grandfather devised an estate to his grandchildren, under the condition that certain persons should be their guardians, though the father of the children was living

at the time of the making of the will. The executors and guardians named, entered into their office, but subsequently the Orphans' Court appointed another person guardian, treating the appointment of the grandfather, as null and void; but the Supreme Court in reversing the decree of the Orphans' Court remarked as follows:

"It is plain the testator does not mean to interfere with the natural right of the father to the custody and care of his children. All that is intended is to commit the management of the estate to his executors, who are appointed guardians of the children. It is of no sort of consequence that he designates them as guardians, rather than as trustees or curators of the estate for the benefit of the infants."

However, the Act of 10 June, 1881, Pamphlet Laws, 96, authorizes the mother to appoint a testamentary guardian to her minor children when she leaves an estate to them, provided that the father be not living, or being deceased, he has not appointed such guardian. Also provides that:

"Every mother, who by her deceased husband's will, has been appointed testamentary guardian of her children, may by her last will and testament appoint a successor in such guardianship."

(3.) As to the power to appoint and discharge guardians vested in the Orphans' Court.

The power to appoint guardians vested in the Orphan's Court having already been set forth in treating of that species of guardianship, it remains therefore to treat of how a guardian may be discharged by the said court and for what cause.

1st. At his own petition.

The Act of 29 March, 1832, Pamphlet Laws, 192, in section 11, provides as follows:

"The Orphans' Court shall have power, upon the petition of any such guardian, to discharge him from the duties of his appointment: *Provided*, That no guardian shall be discharged from his liability for the estate of his ward, until

he shall have rendered to the court an account of the management of his trust, nor until the same shall have been submitted to competent persons as auditors, for examination, and their report thereon be confirmed by the court, unless such account shall have been examined by the said court and the appointment of auditors be found necessary: nor until such guardian shall have surrendered the residue of the estate standing upon his account, settled and confirmed as aforesaid, to a subsequent guardian of such ward or to such other person as the court shall appoint to receive such estate: *And provided further*, That in every such case it shall be the duty of the court to appoint some suitable person to appear and act for the ward, in respect to the settlement of such account."

A guardian may be discharged on his own petition without having filed an account when his ward joins therein: *Marr's Appeal*, 28 P. F. Smith, 66, wherein the 11th section of the Act of 1832 is construed; but he will not be discharged merely on his own petition until he has filed a final account: *Bear's Account*, 3 Luzerne L. Observer, 6. On the discharge of one of two joint guardians, the one discharged does not remain liable for the default of the remaining guardian, but the sureties on the bond do. *Hocker v. Wood*, 9 Casey, 466.

2d. For his mismanagement or misconduct.

The 12th section of the same act provides as follows:

"The Orphans' Court shall have power to remove any guardian, whether testamentary or otherwise, on due proof of his mismanagement of the minor's estate, or misconducting himself in respect to the maintenance, education, or moral interests of the minor; in any such case the court shall have power to order the offending guardian to deliver up, assign, transfer and pay over to the successor in the guardianship, or to such persons as the court shall appoint, all and every the goods, chattels, rights, credits, title deeds, evidences, and securities whatsoever, belonging to the minor, and in the hands or under the power of the guardians, and to make such other order and decree, touching the premises, as the interests of the minor may require."

And sections 22, 23, 24, 26, and 27, as follows:

"SECTION 22. Whenever it shall be made to appear to the Orphans' Court having jurisdiction of the accounts of any executor, administrator or guardian, or to any judge thereof, when such court shall not be in any session, on the oath or affirmation of any person interested, that such executor, administrator or guardian is wasting or mismanaging the estate or property under his charge,

or is like to prove insolvent, or has neglected or refused to exhibit true and perfect inventories, or render full and just accounts of such estate or property, come to his hands or knowledge, then and in every such case it shall be lawful for such court, or for such judge thereof, to issue a citation to such executor, administrator or guardian, requiring him to appear, on a day certain, before an Orphans' Court to be convened for such purpose, if the said court shall not then be in session, and the case shall require dispatch, and upon the return of such citation, the said court may require such security of such executor, or such other and further security of such administrator or guardian, as they may think reasonable, conditioned for the performance of their respective trusts, which security shall be taken in the name of the Commonwealth of Pennsylvania, and filed in the said Orphans' Court, and shall be deemed and considered in trust for the benefit of all persons interested in such estate; *Provided*, That if, in the cases above mentioned, it shall be made to appear to the said court or any judge thereof, on oath or affirmation as aforesaid, that such executor, administrator or guardian is about to remove from this Commonwealth, or that the property under his charge may be wasted or materially injured before he can be reached by the ordinary process of the court, it shall be lawful for such court, or such judge thereof, to issue a writ of attachment, under which the same proceedings may take place as in other cases of attachment on mesne process in the Orphans' Court; and on the return of such attachment, the court may proceed as on the return to the citation above mentioned.

"SECTION 23. If such executor, administrator or guardian shall neglect or refuse to give such security, or such further security so ordered, then the said court shall vacate such letters testamentary or of administration, or remove such guardian, and award new letters, to be granted in such form as the case may require, by the register having jurisdiction, upon such security as the court shall think proper; and in the case of a guardian, the court shall proceed to the admission or the appointment of a new guardian, according to the circumstances of the case; and the said court shall moreover order the first executor, administrator or guardian, to deliver over and pay to his successor, all and every the goods, chattels and estates in his hands, of the decedent or minor, as the case may be.

"SECTION 24. If such superseded executor, administrator or guardian, shall neglect or refuse to comply with the order of the court in the premises, the court may proceed against him by attachment, with or without sequestration, or may issue process for the delivery of the trust, property and effects, as is hereinafter provided, or the successor may proceed at law against him and his sureties, if any there be, or against any other person who may be possessed of any goods or chattels belonging to the estate of the decedent or minor, as the case may be, or be indebted to him, or the remedies by execution and suit at law may be pursued at the same time, if the case so require, until the end be fully attained."

"SECTION 26. When any executor, administrator or guardian shall have been duly declared a lunatic, or an habitual drunkard, it shall be lawful for the Orphans' Court having jurisdiction over the accounts of such executor, administrator or guardian, to vacate the letters testamentary or of administration granted to such executor or administrator, and to remove such guardian, and to award new letters, to be granted in such form as the case may require, by

the register, having jurisdiction upon such security as the court shall think proper; and in the case of a guardian, the court shall proceed to the admission or appointment of a new guardian accordingly; and the court shall also make such order, for the security of the trust property, and for its delivery to the successor of such executor, administrator or guardian, as the circumstances of the case may require.

"SECTION 27. When any executor, administrator or guardian shall have removed from this State, or shall have ceased to have any known place of residence therein, during the period of one year or more, the Orphans' Court, having jurisdiction of the account of such executor, administrator or guardian, may, on the application of any person interested, and after a citation shall have been returned, served, or published, as is hereinafter provided, make a decree vacating such letters testamentary or of administration, and remove such guardian, and award new letters, to be granted in such form as the case may require, by the register having jurisdiction, upon such security as the court shall think proper; and in the case of a guardian, the court shall proceed to the admission or appointment of another guardian accordingly: *Provided*, That no decree, as aforesaid, shall suspend the power, or prejudice the acts of any person who may be joined with such executor, administrator or guardian in the trust."

The Act of 22 April, 1846, Pamphlet Laws, 483, in section 1, provides as follows:

"In all cases where any trustee or trustees, created or vested with authority, by the last will and testament of any deceased person, or any writing testamentary in the nature of a will, shall die, resign or be otherwise removed from the trust, the Orphans' Court of the proper county shall have power and authority to appoint another trustee or trustees, to supply the vacancy occasioned by such death, resignation or removal, and shall require security for the faithful performance of the trust; and the said courts are hereby invested with power to dismiss all executors, administrators or guardians of estates held by testamentary trust, in cases of waste or mismanagement, coming within the provisions of the 22d section of the Act of 29 March, 1832, relative to Orphans' Courts."

The Act of 1 May, 1861, Pamphlet Laws, 680, provides as follows in section 1:

"Whenever it shall appear to the proper court having jurisdiction of the accounts of any executor, administrator, guardian, committee of a lunatic or of an habitual drunkard, or other trustee, on the oath or affirmation of any person interested, that such executor, administrator, guardian, committee, or trustee is wasting or mismanaging the property or estate under his charge, or that for any reason the interests of the estate or property are likely to be jeopardized by the continuance of any such executor, administrator, guardian, committee or trustee, or when such executor, administrator, guardian, committee or trustee is or is likely to prove insolvent, or has neglected to exhibit true and per-

fect inventories, or render full and just accounts of such estate or property, come to his hands or knowledge, according to law, then and in every such case it shall and may be lawful for such court, or for the said president judge, to issue a citation to such executor, administrator, guardian, committee or trustee, requiring him to appear on a day certain, to answer the charge so preferred as aforesaid, and shall make all such necessary rules and orders, as the said court, or the said president judge thereof, may deem right, for bringing the matter complained of to a hearing; and if, on the hearing, the said court, or the said president judge and one associate judge, in vacation, shall be satisfied of the truth of the matters charged, the said court, or the said judges in vacation, if the case shall require dispatch, may in their discretion, instead of requiring the security provided for in the 22d section of the Act of the General Assembly of this Commonwealth, passed the 29th of March, 1832, vacate the letters of administration or testamentary, or commission, and remove such administrator, executor, guardian, committee or trustee, and award new letters or commission, to be granted by the register or by the court, in such form as the case may require, or appoint some suitable person to discharge such trust, upon such security as the court may require; and shall, moreover, order and compel such executor, administrator, guardian, committee or trustee, to deliver over and pay to his successor, all and every the goods, chattels and property, money, estate or effects in his hands as aforesaid."

And the said act in section 2 provides as follows:

"Whenever any sole executor, administrator, guardian, committee or trustee, shall become incompetent to discharge the duties of their respective trusts by reason of sickness or other visitation, and it shall appear to the satisfaction of the court having jurisdiction of their accounts, that such incompetency is likely to continue, to the injury of the estates under their control, it shall be lawful for such court to make a decree vacating the letters testamentary, or of administration granted to such executor or administrator, or revoking the appointment of such guardian, committee or trustee; after which new letters shall be granted, and appointments made, in the same manner as in other cases of vacancy in such trusts."

If the guardian neglect to appear on citation, the court cannot take the complaint *pro confesso*, but should hear evidence to sustain it. *Shilling's Appeal*, 1 Barr, 90. Nor can the court remove two guardians on a complaint against one. *Ibid*.

The following are reasons for the discharge of a guardian:

(1.) The wasting or mismanagement of the estate of the ward. See section 22 of Act of 29 March, 1832,

supra; Act of 22 April, 1846, Pamphlet Laws, 483; and Act of 1 May, 1861, Pamphlet Laws, 680.

(2.) The probability of his becoming insolvent. *Ibid.*

(3.) The neglect to exhibit a true inventory. *Ibid.*

(4.) The failure to render full and just accounts. *Ibid.*

(5.) The removal of guardians from the State or from the jurisdiction of the court. *Ibid.*, and section 27 of Act of 1832; also Bloomer's Appeal, 2 Norris, 45.

(6.) The refusal of a testamentary guardian to give security when ordered. Sections 23 and 24 of Act of 1832.

(7.) The being declared a lunatic. Section 21 of Act of 1832.

(8.) The being an habitual drunkard. *Ibid.*

(9.) The using the ward's money for his own private purpose. Green's Estate, 7 Philadelphia, 502; Stanton's Estate, 36 Legal Intelligencer, 148.

(10.) The refusal to supply necessities to the ward. *Call v. Ward*, 4 Watts & Sergeant, 118.

(11.) The ignorance of duty on the part of the guardian. *Nicholson's Appeal*, 8 Harris, 50.

FIFTH.

SECTION V.

As to the Power, Duties, and Rights of Guardians.

The power and reciprocal duties of a guardian and ward are the same, *pro tempore*, as that of father and child: and therefore I shall not repeat them, but shall only add, that the guardian, when the ward comes of age, is bound to give him an account of all that he has transacted on

his behalf, and must answer for all losses by his wilful default or negligence. 1 Blackstone's Commentaries, 462.

In Pennsylvania guardians are regarded with great liberality by the courts, common skill, common prudence, and common caution, are all that are required of them in the administration of their trust. *Konigmacher v. Kimmel*, 1 Penrose & Watts, 207; *Pim v. Downing*, 11 Sergeant & Rawle, 66; *Chambersburg Saving Fund Association's Appeal*, 26 P. F. Smith, 203; *Hughes's Appeal*, 3 P. F. Smith, 500.

They are not answerable for the acts of agents necessarily employed by them, when proper care has been taken in their selection, unless there is an omission of ordinary diligence on their part in compelling their agents to perform their duties. See as to this reasoning by analogy: *Hennessy v. The Western Bank*, 6 Watts & Sergeant, 300. A guardian using the money of his ward, or neglecting to invest it, is chargeable with interest. *Say v. Barnes*, 4 Sergeant & Rawle, 112; *Hughes's Appeal*, 3 P. F. Smith, 500; *Bachman's Estate*, 1 Clark's Cases, 253. He is bound to examine the accounts of his predecessor and to object to improper charges made therein. *Shirk's Estate*, 1 Lancaster Bar of 18th December, 1869.

It is his duty to see that an embarrassed administrator makes proper application of moneys of the minors to whom he is guardian. *Will's Appeal*, 10 Harris, 325.

It may be well to recite a few decisions in the courts of Pennsylvania in relation to the powers and duties of a guardian.

(1.) He may make leases of the real estate of his ward. *Stoughton's Appeal*, 7 Norris, 198; *Thackray's Appeal*, 25 P. F. Smith, 132; *Hughes's Appeal*, 3 P. F. Smith, 500.

He cannot lease the right to take oil, coal, or minerals

from the lands of his ward unless authorized by the Orphans' Court. *Stoughton's Appeal*, 7 Norris, 198; *Funk v. Haldeman*, 3 P. F. Smith, 229.

(2.) He may bind his ward by accepting a purpart of his ancestor's real estate. *Gelbach's Appeal*, 8 Sergeant & Rawle, 205.

(3.) He may bind his ward by purchasing at an Orphans' Court sale, under proceedings in partition. *Bowman's Appeal*, 3 Watts, 369.

(4.) He may bind his ward by the establishment of consentable lines between adjoining tracts unless the ward dissents on coming of age. *Brown v. Caldwell*, 10 Sergeant & Rawle, 114.

(5.) He may elect to accept payment of a legacy to his ward in securities purchased by the testator, when the executor is unable to sell the same except at a sacrifice. *Reed's Appeal*, 1 Norris, 428.

(6.) He may sue and collect damages for seduction of the ward. *Fernsler v. Moyer*, 3 Watts & Sergeant, 416.

(7.) He may manage the estate the same as a parent. *Eichelberger's Appeal*, 4 Watts, 84.

(8.) He cannot bind his ward by an act which is an abuse and violation of his trust. *Commonwealth v. Hantz*, 2 Penrose & Watts, 333.

(9.) He cannot without authority from the Orphans' Court erect a building on the land of his ward. *In re Miller's Estate*, 1 Barr, 326.

(10.) He cannot convert personal property of his ward into real estate, unless by order of court or imminent necessity. *Royer's Appeal*, 1 Jones, 36; *Davis's Appeal*, 10 P. F. Smith, 118; *Bonsall's Appeal*, 1 Rawle, 266.

(11.) He cannot in all cases change the domicile of his ward. *School Directors v. James*, 2 Watts and Sergeant, 568.

(11½.) He cannot bind out his ward as a servant. *Respublica v. Keppele*, 2 Dallas, 197.

(12.) He cannot sue for ward merely in his own name. *Carskadden v. McGhee*, 7 Watts & Sergeant, 140.

(13.) He can act for several wards in partition. *Totten's Appeal*, 10 Wright, 301.

(14.) He cannot exceed authority given by court. *Snodgrass's Appeal*, 1 Wright, 377.

(15.) If he invest—without authority—his ward's money in the stock of an incorporated company, he does so at his own risk. *Worrell's Appeal*, 11 Harris, 44.

(16.) He cannot make permanent improvements to his ward's property without order of court. *Miller's Estate*, 1 Barr, 326.

(17.) He shall when appointed by court under the 8th section of the Act of 29th March, 1832, or created by will, if required by the court, give a bond of security for the faithful performance of his duty in the form in said section stated; also under the provisions of the 22d and 33d sections of the same act and under those of the 45th section of the Act of 24th February, 1834, the 5th section of the Act of 3d April, 1851, the 6th and 10th sections of the Act of 18th April, 1853, and the 1st section of the Act of 18th March, 1869, all of which are hereafter cited.

(18.) He shall under the 9th section of the Act of 29th March, 1832, file in the office of the clerk of the Orphans' Court, on oath or affirmation, an inventory of the property or estate of his ward.

(19.) He shall under the 10th section of the Act of 29th March, 1832, render, in the office of the clerk of the Orphans' Court, an account once in every three years and as many times oftener as may be required by the courts; but these accounts do not pass the register's office,

nor are they subjects of settlement and confirmation. Yeager's Appeal, 10 Casey, 174.

(20.) He shall under the same section, unless previously discharged or removed, on the arrival of his ward at full age, settle in the register's office a full and complete account of his management of the minor's property under his care, and the manner of settling this account is in most counties of the State the same as required of executors and administrators.

(21.) He shall take charge of the estate as well as of the person of his ward, and is bound to use reasonable diligence in the management of it. Eichelberger's Appeal, 4 Watts, 84.

(22.) He shall collect all moneys due his ward and invest the same, with the approbation of the Orphans' Court, and if he neglect to do so, or use the same for himself, he will be accountable therefor with interest. Hughes's Appeal, 3 P. F. Smith, 500; *English v. Harvey*, 2 Rawle, 305.

(23.) He is not responsible for his ward's breach of contract. *Veldé v. Lowering*, 2 Rawle, 269.

(24.) He is responsible if he neglects to let the property of his ward. *Will's Appeals*, 10 Harris, 325. Or permits a tenant in common with his ward to collect the whole rent due thereon. *Bank of Pennsylvania v. Wise*, 3 Watts, 404.

(25.) He is responsible for the rent of a house leased for his ward. *Hannen v. Ewalt*, 6 Harris, 9.

(26.) If at a sale of property he purchase for the ward, it will be at the option of the latter on coming of age to accept the same or refuse it. *Chorpenning's Appeal*, 8 Casey, 315; but see *Kisler v. Kisler*, 2 Watts, 326.

(27.) If he invest the money of a ward in a note without security, he is liable for the note, but it was held otherwise when invested in a mortgage on land, which from un-

foreseen circumstances became worthless. *Konigmacher v. Kimmel*, 1 Penrose & Watts, 214.

(28.) Where he *bona fide* accepts a purpart of the real estate of a ward's father and gives recognizances for the other shares, the minor is bound thereby. *Gelbach's Appeal*, 8 Sergeant & Rawle, 205.

(29.) It is his duty to make a fair distribution amongst his several wards. *Hampton's Case*, 17 Sergeant & Rawle, 144.

(30.) A foreign guardian may under the provisions of the Act of 8 April, 1872, P. L., 44, transfer shares of stock, etc., and receive dividends and interest. See Act.

(31.) Where the guardian of the minors is the mother she is not personally liable for their maintenance nor is she entitled to their earnings. *Sherer Heirs*, 41 Legal Intelligencer, 125.

It is the duty of the guardian to provide maintenance and education for his ward out of the estate of the ward: *Estate of Flade Minors*, 40 Legal Intelligencer, 131; but in cases of risk and uncertainty he should apply to the Orphans' Court: *Allen v. Larkin*, 41 Ibid., 75; and in this regard the legislature has provided as follows by the 13th section of Act of 29th March, 1832, Pamphlet Laws, 193.

"When any one shall die leaving an infant child or children, without having made an adequate provision for the support and education of such child or children, during their minority, the Orphans' Court may direct a suitable periodical allowance, out of the minor's estate, for the support and education of such minor, according to the circumstances of each case, which order may, from time to time, be varied by the court, according to the age of the minor, and the circumstances of the case."

By the 9th section of the Act of 18th April, 1853, Pamphlet Laws, 507:

"Provided, that, notwithstanding any direction to accumulate rents, issues, interests, and profits, for the benefit of any minor or minors, it shall be lawful for the proper court as aforesaid, on the application of the guardian, when

there shall be no other means for maintenance and education, to decree an adequate allowance for such purpose, but in such manner as to make an equal distribution among those having equal rights or expectancies, whether at the time being minors or of lawful age."

When the personal estate of a decedent is insufficient to pay his debts and provide for the maintenance and education of his minor children, the Act of 29th March, 1832, Pamphlet Laws, 198, in section 31 provides as follows :

"The Orphans' Court, which possesses jurisdiction of the accounts of an executor, administrator, or guardian, shall have power to authorize a sale or mortgage of real estate by such executor, administrator, or guardian, as in the following cases, viz. . . .

"On the application of a guardian, setting forth that the personal estate of the minor is insufficient for his maintenance and education, or for the improvement and repair of other parts of his real estate, or that the estate of said minor is in such a state of dilapidation and decay, or so unproductive and expensive, that it would be to the interest and benefit of said minor, in the judgment of said court, that the said estate should be sold. And the Orphans' Court of the county wherein any such real estate may be situated, shall have the same authority to direct a sale in this latter case as in the cases particularly mentioned in the thirty-second section of this act."

The 32d section of the said act provides as follows :

"When the real estate, with respect to which application shall be made to the Orphans' Court, in the cases mentioned in the preceding section, is situated in the same county, the said court may order the sale or mortgage of such part, or so much of such real estate as to them shall appear necessary, when the real estate is situated in another county or counties, or in the same and another county or counties, and the Orphans' Court which possesses jurisdiction over the accounts of such executor, administrator, or guardian, shall be satisfied of the propriety of a sale or mortgage of some portion of such real estate not within their jurisdiction, it shall be lawful for such court to make a decree, authorizing such executor, administrator, or guardian, to raise so much money as the said court may think necessary, from real estate situated in such county or counties as they may designate; and thereupon, it shall be the duty of the Orphans' Court of the county wherein the real estate so designated is situated, upon the petition of such executor, administrator, or guardian, to make an order for the sale or mortgage, as they shall think expedient, of so much, and such parts of such real estate, as shall, in their opinion, be necessary to raise the specified sum; and such executor, administrator, or guardian, shall in all cases make return of his proceedings in relation to such sale or mortgage, to

the Orphans' Court of the county in which the real estate so sold or mortgaged lies, when, if the same be approved by the court, it shall be confirmed."

The requisites for obtaining the authority to make sale and mortgage as aforesaid are set forth in the 33d and 34th sections of the same act.

"No authority for the sale or mortgage of real estate, lying in the same or another county or counties, shall be granted, until the executor, administrator, or guardian, as the case may be, shall have exhibited to the said court a true and perfect inventory and conscionable appraisement of all the personal estate whatsoever of the decedent or minor, as the case may be, together with a full and correct statement of all the real estate of such decedent or minor, wherever situated, which has come to his knowledge; and also, in the case of an executor or administrator, a just and true account upon oath or affirmation, of all the debts of the decedent which have come to his knowledge; nor in any case shall such authority be granted, until such executor, administrator, or guardian, shall have filed in the office of the clerk of the said court, a bond with sufficient security, to be approved of by the court, conditioned for the faithful appropriation of the proceeds of such sale or mortgage according to their respective duties: *And provided further*, That no real estate contained in any marriage settlement shall, by virtue of this act, be sold or disposed of contrary to the form and effect of such settlement, and that the mansion house or most profitable part of the estate, shall be reserved to the last.

"In all cases where an application shall be made to any Orphans' Court, for a decree authorizing the sale or mortgage of real estate, under any of the provisions contained in this act, the court may appoint suitable persons to investigate the facts of the case, and to report upon the expediency of granting the application, and the amount to be raised by such sale or mortgage; and upon such report being made, the court may decree accordingly."

And instructions as to the notice of sale are given in section 54 of the same act as follows, viz. :

"Whenever, by the provisions of this act, it shall be lawful for the Orphans' Court to order the sale of real estate, public notice of such sale shall be given by the executor, administrator, or guardian, as the case may be, at least twenty days before the day appointed therefor, by advertisement in at least one newspaper published in the county, if there be one, or if there be none, then in an adjoining county; and in all cases, notice shall also be given by handbills, affixed in at least three of the most public places in the vicinity of such estate."

The Act of 16 March, 1847, Pamphlet Laws, 474, provides that upon the application of the guardian of a

minor, the Orphans' Court may decree that the guardian may let the vacant ground of said minor on ground-rent, where the application sets forth that the ground is unproductive and expensive, and that it would be to the interest and benefit of such minor that the same should be let.

The Act of 3 April, 1851, Pamphlet Laws, 305, in section 1, provides for the sale, mortgaging, leasing, and conveyance of the real estate of a minor, on the application of his guardian; and in section 4, provides for the form of the application; and the Act of 18 April, 1864, Pamphlet Laws, 462, authorizes guardians, etc., to join with owners of other joint interests in making and taking conveyances.

The Act of 18 April, 1853, Pamphlet Laws, 503, provides in section 1 that:

"In all cases where real estate shall have been acquired by descent or last will, the Orphans' Court, and in all other cases the Courts of Common Pleas of the respective counties of this Commonwealth, shall have jurisdiction to decree the sale, mortgaging, leasing, or conveyance on ground-rent, of such real estate in the cases hereinafter described: *Provided*, That any such court in the county where the premises shall be situated, shall be of the opinion that it is for the interest and advantage of those interested therein, that the same should be sold, mortgaged, leased, or let on ground-rent, and may be done without injury or prejudice to any trust, charity, or purpose for which the same shall be held: *Provided*, That the same may be done without the violation of any law, which may confer an immunity or exemption from sale or alienation."

Section 2 sets forth the cases in which this may be done, amongst others, where real estate shall be held for or owned by minors.

Section 7 provides that:

"It shall be lawful for trustees, guardians, committees, married women, and corporations, in all the cases aforesaid, under the decree of the court as aforesaid, and with the like effect and indemnity to them in acting thereunder:

"To make and take conveyances, by deed, acknowledged in court, without public sale, in order to square and adjust lines between adjoining owners; to make and take conveyances, to perfect the partition of real estate held in joint-

tenancy, coparcenary, or in common with others; to purchase other real estate, when needful, to that already owned by any such party, or useful to the business thereupon carried on, or when necessary to protect any security or rent held on property exposed to judicial sale : *Provided*, That no corporation shall be so authorized to purchase beyond its charter license."

In section 3 the act provides that:

"Such sale, mortgaging, leasing, or conveyancing upon ground-rents, may be decreed on the petition of any trustee, guardian, committee, or person interested, etc., etc. : *Provided*, That in case of the appointment of a guardian by the court, and the payment of money to him, or of the payment over of money to any former guardian, the court shall take adequate security for the faithful application of such money."

And in section 4 :

"That such sales, mortgages, leasing and letting on ground-rent, shall only take place after careful investigation by the court, . . . 'and shall be made by trustees, executors, administrators, guardians, committees or owners having a present vested interest, as the court may order,' etc., etc."

The same act in section 9 provides how the court, on the application of the guardian, may decree an adequate allowance from a minor's estate for his maintenance and education.

The Act of 13 April, 1854, Pamphlet Laws, 368, provides in section 1, for the acknowledgment of instruments in writing executed by guardians, etc., who reside out of the county in which the real estate is situate, making the same valid if made before the Orphans' Court, or Court of Common Pleas of any county in the State where the person executing may reside.

The Act of 22 April, 1859, Pamphlet Laws, 207, in section 1, provides that in all sales of real estate under the order of the Orphans' Court, authorized by the laws of this Commonwealth, the court decreeing the sale shall have power to direct the terms thereof, etc., in the manner set forth in the section.

The Act of 18 April, 1864, Pamphlet Laws, 462, makes it lawful for guardians :

“To make and take, or to join with owners of other undivided interests in making and taking conveyances, by deed acknowledged in court, and without public sale, in order to change, in part or in whole, the route or location of any right of way or passage existing over and upon adjoining or other lands,” etc.

This act provides that the court may, in their discretion, demand security.

Of Security Bonds, given by or to Guardians.

Provision was made for security bonds to be given to the Orphans' Court as early as 1693, by the law about Testates' and Intestates' Estates, 1 Dallas's Laws, Appendix, 33; also by the Act of 1697, Ibid., 34; also by the Act of 28 October, 1701, Duke of York's Laws, 317, entitled “An act for establishing courts of judicature in this province and the counties annexed;” but, the said acts having been repealed, the last on 7 February, 1705, no Orphans' Court existed in Pennsylvania until the passage of the Act of 27 March, 1713, 1 Smith's Laws, 81, which made provision for the establishment of Orphans' Courts, and in the 3d section provided for security to be given by guardians, etc. The 10th section of the Act of 7 April, 1807, 4 Smith's Laws, 401, likewise provided for such security in cases where, the personal estate of minors being insufficient for their maintenance and education, the guardian was permitted to make sale of the realty. The Act of 30 March, 1821, 7 Smith's Laws, 432, in the 1st section, made also provision for bonds of security to be given by guardians, and it was from this section that the commissioners took the 8th section of the revised Act of 29 March, 1832. The first part of section 1 of the Act of 1821 reads as follows:

“That the several and respective Orphans' Courts within this Commonwealth may, whenever they deem it proper, require bond with good and sufficient security from all and every guardian or guardians of a minor child or children, whether such guardian has been or shall be appointed by the court, chosen by

the minor with the approbation of the court, or created by the last will and testament of a deceased testator, which bonds shall be considered in trust for all persons interested, and shall be taken and filed in the Orphans' Court in the name of the Commonwealth, with a condition and in the manner and form following, viz."

The form of the bond as given in this act differs but little from the form given in the 8th section of the Act of 29 March, 1832. The 2d section of the act of 1821 made provision for the security of such sureties of a guardian as might suppose themselves to be in danger of injury from such surety. This section was supplied by the 28th section of the Act of 29 March, 1832, Pamphlet Laws, 197, which, after providing for the application to the Orphans' Court by the surety, states that the court may order the guardian to give counter security to indemnify the surety, and in case of failure to do so may order the guardian to pay over to the surety the goods, chattels, etc., for which the surety was accountable: *Provided*, "That such surety shall first give, to the satisfaction of the court, sufficient security, faithfully to preserve and account therefor, and deliver and dispose of the same according to the order of the said court."

Security bonds may be divided into two classes, as follows:

(1.) Bonds for the faithful performance of duty assigned, viz.:

1st. Under section 7 of Act of 29 March, 1832, Pamphlet Laws, 191.

2d. Under section 8 of Act of 29 March, 1832, Pamphlet Laws, 191.

3d. Under section 22 of Act of 29 March, 1832, Pamphlet Laws, 195.

4th. Under section 33 of Act of 29 March, 1832, Pamphlet Laws, 200.

5th. Under section 5 of Act of 3 April, 1851, Pamphlet Laws, 306.

6th. Under section 3 of Act of 18 April, 1853, Pamphlet Laws, 504.

7th. Under section 4 of Act of 18 April, 1853, Pamphlet Laws, 505.

8th. Under section 6 of Act of 18 April, 1853, Pamphlet Laws, 506.

9th. Under section 1 of Act of 18 April, 1864, Pamphlet Laws, 462.

10th. Under section 1 of Act of 18 March, 1869, Pamphlet Laws, 409.

11th. Under Act of 17 May, 1871, Pamphlet Laws, 269.

(2.) Bonds for the refunding to executors, administrators, guardians, and remainder-men, of money paid out by them in error.

1st. Under section 45 of Act of 24 February, 1834, Pamphlet Laws, 82.

2d. Under section 46 of Act of 24 February, 1834, Pamphlet Laws, 82.

3d. Under section 47 of Act of 24 February, 1834, Pamphlet Laws, 82.

4th. Under section 49 of Act of 24 February, 1834, Pamphlet Laws, 83.

5th. Under section 52 of Act of 24 February, 1834, Pamphlet Laws, 83.

6th. Under section 61 of Act of 24 February, 1834, Pamphlet Laws, 84.

7th. Under section 1 of Act of 13 April, 1859, Pamphlet Laws, 604, amended by act 10 June, 1881, Pamphlet Laws, 106.

(1.) *Of Bonds for the Faithful Performance of Duty by a Guardian.*

We have seen by the foregoing that it is the duty of the guardian, when required by the Orphans' Court, to

file a bond of security for the faithful discharge of his duty as guardian. This is provided for as follows:

1st. Under the 7th section of the Act of 29 March, 1832, Pamphlet Laws, 191, *supra*, page 26.

2d. Under the 8th section of the Act of 29 March, 1832, Pamphlet Laws, 191.

"The Orphans' Court, having jurisdiction, whenever they may deem it proper, may require a bond with good and sufficient security, from every guardian of a minor, whether admitted or appointed by the court, or created by will, which bond shall be filed in the office of the clerk of the court, and be considered in trust for all persons interested; the bonds shall be taken to the Commonwealth in such penalties as the court shall direct, and the condition shall be in the following form: 'The condition of this obligation is such, that if the above bounden A. B., guardian of C. D., a minor child of E. F., late of ———, deceased, shall, at least once in every three years, and at any other time when required by the Orphans' Court for the county of ———, render a just and true account of the management of the property and estate of the said minor, under his care, and shall also deliver up the said property, agreeably to the order and decree of the said court, or the directions of law, and shall, in all respects, faithfully perform the duties of guardian of the said C. D., then the above obligation shall be void, otherwise it shall be and remain in full force and virtue:' *Provided*, That nothing in this act contained shall be construed to deprive a minor of any action or remedy to which he may be entitled at the common law against his guardian, for any cause whatever."

The duty of filing such bond is not primarily incumbent on a testamentary guardian, because, as in the case of an executor, the testator's appointment shows the trust and confidence reposed in him. *Stanton's Estate*, 7 Weekly Notes of Cases, 18. But if the testamentary guardian fail to fulfil his duty as guardian, or makes use of the money of his ward, the court may require him to enter security.

It is competent for the court to require such security either at the time of the appointment of the guardian, or at any subsequent time. *Lloyd v. Commonwealth*, 35 Legal Intelligencer, 171. Moreover, guardians are not always required to give security, that being a matter at the discretion of the court. *Royer v. Myers*, 3 Harris, 88; *Newcomer's Appeal*, 7 Wright, 44.

In regard to the entering of security by guardians, the Orphans' Court of the city of Philadelphia has made the following rules :

RULE VIII., SECTION 3. "In every case where the amount of security required to be given by a trustee or guardian shall be two thousand (\$2000) dollars, or in excess thereof, the surety or sureties shall be approved by the court, but when less than that amount they may be approved by the clerk, in pursuance of an order of court previously made."

SECTION 4. "When any corporation shall hereafter be appointed trustee or guardian by this court, it shall be upon condition that such corporation shall not invest any of the trust funds in coupon bonds or other securities that pass by delivery."

"Every such corporation shall be required to invest all trust funds in its name as trustee or guardian as the case may be, and keep the same separate and apart from its own funds."

SECTION 5. "No certificate of the appointment of any guardian or trustee shall be given by the clerk of the court, without security (if required) having been first entered."

RULE XIII. "All applications for approval of securities shall be accompanied by an affidavit of the party or parties offered as security, setting forth :

I. "His or their name, residence, and occupation.

II. "The location of real estate owned by him or them, or so much as may be sufficient, and a memorandum of the record thereof.

III. "That the title thereof is in his or their name.

IV. "The nature and amount of incumbrances, if any, upon the real estate.

V. "The assessed value of the real estate described.

"Said affidavit shall be filed with the clerk of the court;" Rules, edition of 1883, 9 and 21.

3d. Under the 22d section of the Act of 29 March, 1832, Pamphlet Laws, 195, as follows :

"Whenever it shall be made to appear to the Orphans' Court having jurisdiction of the accounts of any executor, administrator, . . . or guardian, or to any judge thereof when such court shall not be in 'any' session, on the oath or affirmation of any person interested, that such executor, administrator or guardian is wasting or mismanaging the estate or property under his charge, or is like to prove insolvent, or has neglected or refused to exhibit true and perfect inventories, or render full and just accounts of such estate or property, come to his hands or knowledge, then and in every such case it shall be lawful for such court, or for such judge thereof, to issue a citation to such executor, administrator or guardian, requiring him to appear, on a day certain, before an Orphans' Court to be convened for such purpose, if the said court shall not then be in session and the case shall require dispatch, and upon the return of such citation, the said court may require such security of such exec-

utor, or such other and further security of such administrator or guardian as they may think reasonable, conditioned for the performance of their respective trusts, which security shall be taken in the name of the Commonwealth of Pennsylvania and filed in the said Orphans' Court, and shall be deemed and considered in trust for the benefit of all persons interested in such estate: *Provided*, That if, in the cases above mentioned, it shall be made to appear to the said court or any judge thereof, on oath or affirmation as aforesaid, that such executor, administrator or guardian is about to remove from this Commonwealth, or that the property under his charge may be wasted or materially injured before he can be reached by the ordinary process of the court, it shall be lawful for such court, or such judge thereof, to issue a writ of attachment, under which the same proceedings may take place as in other cases of attachment on mesne process in the Orphans' Court; and on the return of such attachment, the court may proceed as on the return to the citation above mentioned."

The above section, it is seen, applies to all guardians, and when accused of using the property of the ward for their own purposes, they may be required by the court to give additional security. *Stanton's Estate*, 7 Weekly Notes of Cases, 18.

4th. Under the 33d section of the Act of 29 March, 1832, Pamphlet Laws, 200, as follows:

"No authority for the sale or mortgage of real estate, lying in the same or another county or counties, shall be granted, until the executor, administrator or guardian, as the case may be, shall have exhibited to the said court a true and perfect inventory and conscionable appraisement of all the personal estate whatsoever of the decedent or minor, as the case may be, together with a full and correct statement of all the real estate of such decedent or minor, wherever situated, which has come to his knowledge; and also, in the case of an executor or administrator, a just and true account, upon oath or affirmation, of all the debts of the decedent which have come to his knowledge; nor in any case shall such authority be granted, until such executor, administrator or guardian, shall have filed in the office of the clerk of the said court, a bond, with sufficient security, to be approved of by the court, conditioned for the faithful appropriation of the proceeds of such sale or mortgage, according to their respective duties: *And provided further*, That no real estate contained in any marriage settlement shall, by virtue of this act, be sold or disposed of contrary to the form and effect of such settlement, and that the mansion house, or most profitable part of the estate, shall be reserved to the last."

The above section provides for a bond from the guardian, conditioned for the faithful appropriation of the proceeds of the sale or mortgage of the ward's estate.

5th. Under the 5th section of the Act of 3 April, 1851, Pamphlet Laws, 306, relating to sales of real estate of minors by their guardians or trustees, as follows :

"Before any sale of lands under any of the provisions hereof shall be confirmed by the court, the person or persons to whom the order of sale shall be granted, shall file in the office of the clerk of said court a bond, with two or more sureties, to be approved of by the said court, in double the amount of the proceeds of such sale, conditioned for the faithful appropriation of said proceeds ; and no sale duly made and confirmed by the proper court, shall be held to be void by reason of any misapplication of the proceeds thereof, or on account of any error of judgment which the said court may have made in deciding that such sale was to the interest of the minors or *cestui que trusts* interested in the lands so sold."

6th. Under the 3d section of the Act of 18 April, 1853, Pamphlet Laws, 504 (this is the well-known "Price" Act, relating to the selling of real estate by persons acting in a trust capacity), as follows :

"Such sale, mortgaging, leasing, or conveyance upon ground-rent may be decreed, on the petition of any trustee, guardian, committee or person interested, clearly setting forth the facts needful for the information of the court, under oath or affirmation ; and if all proper parties shall not have voluntarily appeared as petitioners or respondents, the court shall fix a day for parties to appear, and cause a citation to be served on all persons in being who shall not have appeared, and who shall have any present or expectant interest in the premises, warning them to appear, and that they shall be heard on the day designed ; and for those who cannot otherwise be served, cause advertisement to be made in manner most likely to afford notice ; and service made in any part of the United States and the territories thereof, with oath or affirmation of the fact, taken before any judge or justice of the peace, and filed of record, shall be good service ; and guardians shall be served and appear for their wards ; and if minors shall have no guardian, the court shall appoint a guardian for them ; committees shall be served and appear for lunatics and habitual drunkards ; and husbands shall be served and appear with their wives, except husbands who shall have abandoned their wives for two years, or been absent and unheard from for seven years ; and if parties make default in appearing, the court, after investigation of the facts, may proceed to make decree in the premises : *Provided*, That in case of the appointment of a guardian by the court, and the payment over of money to him, or of the payment of money to any former guardian, the court shall take adequate security for the faithful application of such money ; and before the payment of any money to any guardian, not within the court's jurisdiction, the court shall be duly notified that adequate security has been given to the court having jurisdiction over him, whether within or without the Commonwealth."

See Clothier's Appeal, 3 Brewster, 254, as to parties under this section.

7th. Under the 4th section of the Act of 18 April, 1853, Pamphlet Laws, 505:

"Such sales, mortgages, leasing and letting on ground-rent, shall only take place after full and careful investigation by the court, aided, when deemed necessary, by the report of a competent person to be appointed by the court; and shall be made by trustees, executors, administrators, guardians, committees or owners having a present vested interest, as the court may order; and be under the direction and subject to the approval of the court before which the deed shall be acknowledged, and be certified under seal to have been acknowledged; and all absolute sales in fee-simple (except as hereinafter provided) shall be by public sale or vendue, and may be either entirely for cash or partly on credit and partly for cash, after full advertisement for at least twenty days by hand-bills posted in at least twenty of the most public places in the city or county where the premises shall be situated, and in at least two newspapers, not less than three times in each: *Provided*, That if the court shall be of opinion that under the circumstances a better price can be obtained at private than at public sale, as where the interest be undivided, or for other sufficient cause, the court may approve and decree a private sale; and such mortgaging, leasing and letting on ground-rent, shall be upon terms and at rates to be approved by the court; and the specific execution of the contracts of decedents upon the terms and at the price proved or admitted to have been agreed upon by the parties; but no such private sale, leasing or letting on ground-rent shall be upon terms or at rates less favorable than others, who, of competent ability to contract and uniting in the sale of undivided interests, shall accept; and it shall be the duty of the court, in decreeing sales, leases and conveyances upon ground-rent of real estate, to order the premises if necessary to be so subdivided as to command the highest price or greatest rents, and for such purposes, where the premises may admit of or require it, shall have power to lay out roads, streets and alleys, and to vacate such as shall not have been paid for, or received into actual use by the public if found to be inconvenient, and to make an unprofitable division of the property: *And provided further*, That no sale or sales shall be ordered or made under the provisions of this act, in any case, until security to be approved by the Court of Common Pleas or Orphans' Court, be given in at least double the value of the interest proposed to be sold."

The Orphans' Court may decree a private sale of the undivided interest of a minor, though the other owners do not unite in the sale. *Gilmore v. Rodgers*, 9 Pittsburg Legal Journal, 209. Moreover, it is sufficient that the security be given before the confirmation of the sale.

Thorn's Appeal, 11 Casey, 47; Greenawalt's Appeal, 1 Wright, 95.

8th. Under the 6th section of the Act of 18 April, 1853, Pamphlet Laws, 506, as follows :

"The purchase-money or mortgage-money, ground or other rent reserved, shall, in all respects, be substituted for the real estate sold, mortgaged or let, as regards the enjoyment and ownership thereof, after the payment of liens, and shall be held for or applied to the use and benefit of the same persons, and for the same estate and interest, present or future, vested, contingent or executory, as the real estate sold, mortgaged or let, had been held, except only such remainders after an entailment, or contingent remainders, as shall have been barred or defeated as aforesaid; and those entitled to a present interest in such real estate shall receive the interest of the proceeds or rents thereof, unless expressly directed to accumulate: *Provided*, That no principal moneys raised by sale or mortgage, as aforesaid, shall be expended for any other purpose than for the payment of liens upon or the improvement of the same real estate when mortgaged, or other real estate when held for the same uses and persons, unless the same be required for the maintenance or education of parties having the like interests vested or expectant, and can be equally and equitably so applied, and without diminution of the capital that may of right become the property of parties having unbarred interests or title in remainder, or by executory devise; and it shall be the duty of the court to decree the proper application of all purchase or mortgage-moneys and rents, with the aid of an auditor, when deemed necessary, to the discharge of liens and to parties interested, as and when they may be entitled; and before any decree shall be executed, the person or persons intrusted to execute the same shall give adequate security to the Commonwealth, to be approved by the court, conditioned for the faithful execution of the trust and proper application of all moneys to be received according to the trust and decree of the court; which security shall inure to the benefit of all parties interested; and such security being so given, no purchaser or lessee shall be bound to see to the application of the purchase-money or rents, or be, in any manner, liable to or affected by the former trust or limitations upon the premises."

Section 10 of said act provides as follows:

"The directions given in the 6th section of this act, in regard to the security to be given in cases of sales, mortgage or letting of real estate, and the condition of the bond or security therein prescribed, shall apply to all cases of sales or mortgage of real estate, and the condition of the bond or security therein prescribed shall apply to all cases of sales or mortgage of real estate by order of the courts of this Commonwealth."

The 7th section of the Act of 1853 made it lawful for trustees, guardians, etc., under decree of court to make

and take conveyances, to perfect partitions, and to purchase other property, to protect their sureties on the land as is in said section set forth.

9th. Under the 1st section of the Act of 18 April, 1864, Pamphlet Laws, 462, as follows :

“ It shall be lawful for trustees, guardians, committees, married women and corporations, in addition to the powers conferred by the seventh section of the act to which this is a supplement, under the decree of the proper court, and with the like effect and indemnity to them in actions thereunder, to make and take, or to join with owners of other undivided interests in making and taking conveyances, by deed acknowledged in court, and without public sale, in order to change, in part or in whole, the right or location of any right of way or passage, existing over and upon adjoining or other lands : *Provided*, The court shall be of opinion that it (is) for the interest or advantage of the owner or owners of the land to which such right of way is appurtenant, that such change of route or location be made as aforesaid : *And provided further*, That it shall be in the discretion of the court, in such cases, to require security, or not, from the person or persons aforesaid, making or taking such conveyances.”

10th. Under the 1st section of the Act of 18 March, 1869, Pamphlet Laws, 409, in Mercer County :

“ The Orphans' Court of Mercer County shall have power, on the application of the guardian of any minor or minors owning minerals within said county, to authorize any guardian to lease said mineral lands, on such terms and conditions, and for such rental or royalty per ton or otherwise, as shall appear just and equitable to said court, with the same force and effect as though said lease were made by a person of full age : *Provided*, That said guardian shall first file his bond in said court, in such sum, and with such surety or sureties as shall be approved by said court, conditioned for the faithful application and payment by him, of all rental or royalties to be received under said lease.”

11th. Under Act of 17 May, 1871, Pamphlet Laws, 269, section 1 :

“ That hereafter any trustee, guardian, executor or administrator appointed by any court in this Commonwealth, or by virtue of any last will or testament, may lawfully execute the duties of his trust, whether a resident of the county in which the trust was created or in which the decedent had his domicile or not ; but the court or officers having jurisdiction of the accounts of any such trustee may, in its discretion, appoint or refuse to appoint as trustee, guardian or administrator, any persons who are not residents of the State, requiring in all cases of a non-resident of the State, a bond with sufficient sureties condi-

tioned for the faithful discharge of the duties of the trust: *Provided*, That no person residing out of the State shall be appointed without the consent of the proper court."

The Act of 23 March, 1867, Pamphlet Laws, 43, in section 1, provides that :

"All deeds made to convey real estate sold under an act passed the 18th day of April, 1853, entitled 'An act relating to the sale and conveyance of real estate,' being acknowledged in court, and so certified to have been, by the clerk or prothonotary, as required by said act, or supplements, may be recorded in the recorder of deeds' office without other acknowledgment; and the security required by said act, may be approved by the proper court of like jurisdiction of the county of which the grantor or one of them is resident, and be certified under seal of such court, to that wherein the sale was decreed; and such certificates shall be certified on the record thereof."

And in section 2, that:

"Private sales made by order of court under the said Act of April, 1853, shall discharge the premises sold from the lien of the debts of the decedent, except debts of record, and debts secured by mortgage."

(2.) Of bonds for the refunding to executors, administrators and guardians of moneys paid out by them, where a valid claim against the estate may arise.

These bonds are called refunding bonds, and arise from and under the following Acts of Assembly.

1st. Under the 45th section of the Act of 24 February, 1834, Pamphlet Laws, 82, relating to sales of real estate in partition, which provides for a refunding bond as follows :

"Before any distribution of the proceeds of such real estate shall be made among the kindred of the decedent, the persons entitled to receive the same shall, respectively, give sufficient real or personal security to be approved of by the Orphans' Court having jurisdiction, with condition that if any debt or demand shall be afterwards recovered against the estate of the decedent, or otherwise be duly made to appear, they will respectively refund the ratable part of such demand, and the costs and charges attending the recovery of the same, so far as such real estate would have been liable to such demand if it had remained unsold; but if the person or persons entitled to receive the same, is or are

unable to give the security aforesaid, then the money shall be put at interest as directed in the forty first section of this act."

The above section is preceded by section 44, of the same act, which provides that when an executor or administrator shall neglect to execute an order for the sale of real estate to effect a partition, the court may appoint a trustee for that purpose.

2d. Under the 46th section of the same act, which provides that in the case of a sale of a decedent's real estate for the payment of debts, a tenant for life shall not receive his or her share of the surplusage, until a refunding bond has been given for the security of the remainderman.

3d. Under the 47th section of the same act, which relates to distribution by executors, and provides that security shall be given by the recipients as in distribution under the 45th section.

4th. Under the 49th section of the same act, which provides for the security of the remainderman when the decedent had made a bequest for like term of years, or in a contingency. As to this section see *King v. Diehl*, 9 Sergeant & Rawle, 423.

5th. Under the 52d section of the same act, which provides for security to be given by legatees, before execution on any judgment obtained by them to recover their legacies.

The 57th section of the same act provides that executors and administrators shall not be liable when security is taken as aforesaid, and the 58th section provides that they may make distribution without applying to court, but at their own risk.

6th. Under the 61st section of the same act, which provides for security to be given by the legatee when the real estate on which the legacy is a lien, is in another county.

7th. Under the 1st section of the Act of 13 April, 1859, Pamphlet Laws, 604, which provides as follows for a refunding bond to be given by a ward to his guardian.

“Where any executor, administrator or guardian has been required, or hereafter shall be required upon the receipt of money, to give a refunding bond as required by law, it shall be lawful for such executor, administrator or guardian upon paying over such money to creditors, heirs, legatees or ward, to require under the direction of the Orphans’ Court, a bond, refunding receipt or other obligation from the person or persons receiving the money, to indemnify such executor, administrator or guardian to the amount each one may receive.”

This section was amended by the 1st section of the Act of 10 June, 1881, Pamphlet Laws, 106, by adding thereto as follows :

“And whenever such ward has reached lawful age and is a married woman, it shall be competent for her, either in person or by attorney, to sign, seal and deliver her own refunding bond to such guardian or his legal representative, with the same effect as if she were unmarried, and were receiving directly from the executor or administrator.”

As to the Amount of the Bond of Security.

In fixing the amount of a guardian’s bond, it is the proper and usual practice to take into consideration the amount of the personal estate, or the rental of the real estate. See *Lloyd v. Commonwealth*, 35 Legal Intelligencer, 171. And in Philadelphia the practice is to require security in double the amount of the personal property, which may probably come into the hands of said guardian. See Rules, edition of 1883, VI., section 3.

It was held in the case of *Commonwealth v. Pray*, 1 Philadelphia, 58, as follows :

1st. A guardian’s bond filed in the Orphan’s Court, under the Act of 29 March, 1832, is in trust for all persons interested ; in a suit upon it therefore, by one of the parties in interest, profert is dispensed with, as the bond is not in the custody of the plaintiff.

2d. In a suit against the representatives of a deceased

obligor, it should be averred that he was alive when the instrument was executed; if this be not alleged, it is ground for special demurrer.

3d. In the suit on the bond of a guardian, under the 8th section of the Act of 29 March, 1832, the particular breach for which redress is sought should be set out with certainty and precision, and in accordance with the provisions of the Act of 14 June, 1836, should point directly and explicitly to the condition of the bond which had been violated. When, therefore, two breaches are alleged: First, not delivering up the property of the ward agreeably to the decree of the Orphans' Court; and secondly, not faithfully performing in all respects, the duties of guardian, etc., the pleading is vicious, and defendant is entitled to judgment on special demurrer.

4th. When the declaration alleges several distinct breaches of the condition of the bond, and then avers by reason of the said breach to which reference was specially had, defendant cannot know upon which breach plaintiff relies, and the declaration is therefore bad.

5th. A guardian, like an administrator or executor, must furnish evidence in his pleadings of his right to sue.

6th. As by the provisions of the Act of Assembly, in relation to suits on official bonds, judgment is to be given, first for the Commonwealth in the amount of the obligation, and second for the plaintiff for damages and costs; the declaration should assert a right of action in the Commonwealth, and an omission to do so is bad on demurrer.

As to the Inventory.

By the Act of 29 March, 1832, Pamphlet Laws, 192, and *supra*, section 9, it is made the duty of the guardian to file an inventory, and this is a duty incumbent on "every guardian of a minor, whether admitted or ap-

pointed by the court, or created by will." And it is stated by the court in Stanton's Estate, 7 Weekly Notes of Cases, 18, that "these duties, we fear, are too often overlooked and neglected, it being considered a sufficient compliance with the law to file a final account upon the ward attaining majority." And though this duty be not specifically mentioned in the bond, it is included in the promise that the guardian "shall, in all respects, faithfully perform the duties of guardian." The verbiage of the section is as follows: "Every such guardian shall, within thirty days after any property of his ward shall have come into his hands or possession, or into the hands or possession of any person for him, file in the office of the clerk of the court a just and true inventory and statement, on oath and affirmation, of all such property or estate."

As to the Guardian's Accounts.

The duty of the guardian to render accounts of the property which has come into his hands, and of his management of the minor's estate, is fully recognized at law and in equity. The Act of 29 March, 1832, Pamphlet Laws, 191, in sections 8 and 10, *supra*, comprehends the performance of this duty, and the proper rendering of such, is one of the conditions of the bond under section 8, of the act.

Section 11, of the same act, provides that no guardian shall be discharged from his liability until this duty is performed. Section 10 is as follows:

"Every such guardian, whether required by the court to give security or not, shall at least once in every three years, and at any other time when so required by the court, render an account of the management of the minor's property under his care, which accounts shall be filed in the office of the clerk of the Orphans' Court for the information of the court and the inspection of all parties concerned; and every such guardian, unless previously discharged or removed, shall, on the arrival of his ward at full age, settle in the register's office a full and complete account of his management of the minor's property under his care,

including all the items embraced in each partial settlement, and the decree of the Orphans' Court upon such final accounts shall, like other decrees of the court, be conclusive upon all parties, unless reversed, modified or altered, on appeal."

Sections 15, 16, and 18 of the same act, provides as follows:

"No account of an executor, administrator or guardian, shall be confirmed and allowed by the Orphans' Court, except in the cases herein specially provided for, unless it shall appear on the presentation of such account that notice of such presentation has been given, conformably to the directions of the act entitled 'An act relating to registers and registers' courts.'

"All accounts presented to the Orphans' Court by executors, administrators, guardians or trustees, except partial accounts rendered by guardians in pursuance of section the tenth of this act, shall, unless it be otherwise agreed by all the parties interested, be examined by the court or referred to suitable persons, not exceeding three in number, to be appointed by the said court, or by the parties where they are all present or duly represented, and competent to agree; and the persons so appointed shall be sworn or affirmed to perform their duties with fidelity, and shall have power to administer oaths and affirmations to parties and witnesses, in all cases referred to them.

"The amount of interest to be paid in all cases by executors, administrators and guardians, shall be determined by the Orphans' Court, under all the circumstances of the case, but shall not, in any instance, exceed the legal rate of interest for the time being."

Section 16 *supra* was altered by the Act of 14 April, 1835, Pamphlet Laws, 275, as follows:

"All accounts presented to the Orphans' Court by executors, administrators, guardians or trustees, shall be examined by the court, and if not excepted to, shall, after due consideration, be confirmed; but if any person interested in the estate shall except to the account, and all or any of the parties shall desire to refer the accounts to auditors, the court shall decide whether the matters contested call for such reference; and if they do, the court shall appoint three suitable persons; or where the parties are all present or duly represented, and competent to agree, and desire a reference, they may appoint auditors; and the persons so appointed shall be sworn or affirmed to perform their duty with fidelity, and shall have power to administer oaths and affirmations to parties and witnesses in all cases referred to them: *Provided*, The provisions of this section shall not extend to the city and county of Philadelphia."

The proviso in the latter act was repealed by Act of 27 February, 1845, Pamphlet Laws, 69, but the Act of

1845 was repealed by Act of 10 April, 1849, Pamphlet Laws, 620, and the proviso was extended to Montgomery County by Act of 18 February, 1869, Pamphlet Laws, 183.

By Act of 25 April, 1850, Pamphlet Laws, 572, section 18, the clerks of the Orphans' Courts were required to record all accounts of guardians, etc.

By the 29th and 30th sections of the Act of 29 March, 1832, prothonotaries were required to file extracts of the amount due on a guardian's account, which would thereafter become a lien on his real property for five years, and longer if revived by *scire facias*.

Under the sections aforesaid, there are two classes of accounts :

1st. Partial or triennial.

2d. Final.

1st. As to partial accounts.

In regard to the "partial" accounts, they are not necessarily simply triennial, as they may be required by the court at any time.

These accounts may be impeached by the ward after his attaining age. See *Bowman v. Herr's Executors*, 1 Penrose & Watts, 282; and in the case of *Douglas' Appeal*, 1 Norris, 169, Judge Sharswood says :

"All partial accounts of guardians during the minority of the ward, whether filed in the register's office or in the office of the clerk of the Orphans' Court, are not for settlement and confirmation, and even if they go through the forms of a settlement and confirmation, are not conclusive upon the ward."

See also remarks on the subject in *Dietterich v. Heft*, 5 Barr, 93; *Yeager's Appeal*, 10 Casey, 177; *McCormick v. Joyce*, 7 Barr, 249; *Foltz's Appeal*, 5 P. F. Smith, 428; *Stanton's Estate*, 7 Weekly Notes, 18; *Landis's Account*, 1 Pearson, 401; *Braining's Estate*, 7

Weekly Notes of Cases, 34; Secker's Estate, 3 Weekly Notes of Cases, 391; and McMahon's Estate, 14 Ibid., 311.

Where there are several children, it is the duty of the guardian to keep separate accounts with each. *Baker v. Richards*, 8 Sergeant & Rawle, 12.

2d. As to the final accounts of guardians.

When a guardian resigns his trust before the ward attains full age, he must file a final account, and after settlement thereof by the court he must pay the balance of the minor's estate in his hands over to his successor. *Bean's Account*, 3 Luzerne Legal Observer, 6.

On the settlement of a guardian's account it is the duty of the court to appoint a suitable person to appear and protect the interests of the ward. *Grand Army of the Republic v. Wall*, 6 Lancaster Bar, 62.

When a guardian has fairly settled with his ward, after an examination of his accounts by a disinterested party, and the production of his vouchers, he will not be compelled, after a lapse of four years, to settle a further account in the Orphans' Court. *Lukens's Appeal*, 7 Watts & Sergeant, 48.

A settlement between guardian and ward made in good faith and on full deliberation cannot be impeached after the decease of the ward. *Hawkins's Appeal*, 8 Casey, 263.

After a lapse of nineteen years a guardian will not be compelled to settle an account. *Gress's Appeal*, 2 Harris, 463.

On the death of a guardian the proper person to file his account is his personal representative, and an application for a citation should be by a guardian and not by a *prochein ami*. *Stewart's Estate*, 3 Weekly Notes of Cases, 476.

It is the duty of a guardian to settle an account, on his

ward's attaining full age, whether specially called on to do it or not. Overholtzer's Estate, 8 Lancaster Bar, 109.

A guardian's final account must include all the items embraced in former partial accounts. Yeager's Appeal, 10 Casey, 173; Hughes's Appeal, 3 P. F. Smith, 500.

It seems that the guardian's account may be re-examined in the Orphans' Court and in the Supreme Court after the ward has come of age in some cases. Blount v. Darrach, 14 Sergeant & Rawle, 184, in note.

A settlement by a guardian with his ward soon after the arrival of the ward at full age and a payment of a balance to him will not preclude a re-examination of the account on a petition of a review filed in due time. Kinter's Appeal, 12 P. F. Smith, 318.

A release by a ward to his guardian after attaining majority, if given by mistake, will not bar a citation to account. Shannon's Estate, 1 Philadelphia, 299.

In Article V., section 22, clause 3d of the Constitution of Pennsylvania of 1873, it is provided that accounts filed with the Register or Clerk of the separate Orphans' Court, shall be audited by the court without expense to the parties, except where all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

A guardian will not be surcharged with moneys not received unless in case of fraud or gross negligence. Estate of Sherer Minors, 41 Legal Intelligencer, 125.

As to the review of a guardian's account:

Prior to the passage of the Act of 13 October, 1840, Pamphlet Laws, 1, the right to apply to the Orphans' Court for a review of a guardian's accounts was without limit of time. Briggs's Appeal, 5 Watts, 91. It was granted by the equity power of the court. Blount v. Darrach, 14 Sergeant & Rawle, 188, note. See, as to the effect of the act: Bunting's Appeal, 4 Watts & Ser-

geant, 469 ; Chambers's Appeal, 1 Jones, 436 ; Gillen's Appeal, 8 Weekly Notes, 499. The act is as follows :

"SECTION 1. The judges of the Orphans' Court of the Commonwealth of Pennsylvania, within five years after the final decree confirming the original or supplementary account of any executor, administrator or guardian, which has or may be hereafter passed, as aforesaid, upon petition of review being presented by such executor, administrator or guardian, or their legal representatives, or by any person interested therein, alleging errors in such account, which errors shall be specifically set forth in said petition of review, and said petition and errors being verified by oath or affirmation, said Orphans' Court shall grant a rehearing of so much of said account as is alleged to be error in said petition of review, and give such relief as equity and justice may require by reference to auditors or otherwise ; with like right of appeal to the Supreme Court as in other cases, except that the appeal shall be taken under the provisions of this act within one year after the decree made on the petition of review : *Provided*, That this shall not extend to any cause when the balance found due shall have been actually paid and discharged by any executor, administrator or guardian."

In regard to limitations fixed by this act, the court below, in the case of *Weiting v. Nissley*, 6 Barr, 142, says :

"Whatsoever may have been the practice in relation to opening and correcting such accounts, and the time during which it would be allowed, we regard the question now settled by the Act of 13 October, 1840."

And in the case of *Kinter's Appeal*, 12 P. F. Smith, 322, Judge Sharswood says in reference thereto :

"The object of that act seems to have been to make a bill of review in the Orphans' Court a matter of right, and at the same time prescribe a limitation of time to the exercise of the power."

Under this act, when a fraud has been committed, the limitation begins to run from its discovery by the injured party. *Kuhn's Appeal*, 6 Norris, 100.

The Orphans' Court may entertain the petition after the decree of the Supreme Court confirming the original account. *Parker's Appeal*, 11 P. F. Smith, 478.

As to the lien of a balance due by a guardian on his real estate:

In this regard the 29th and 30th sections of the Act of 1832 provide as follows:

"It shall be the duty of the prothonotary of the Courts of Common Pleas of the respective counties, to file and docket, whenever the same shall be furnished by any parties interested, certified transcripts or extracts, of the amount appearing to be due from or in the hands of any executor, administrator, guardian or other accountant, on the settlement of their respective accounts in the Orphans' Court, which transcripts or extracts, so filed, shall constitute liens on the real estate of such executor, administrator, guardian or other accountant, from the time of such entry until payment, distribution, or satisfaction; and actions of debt or *scire facias* may be instituted thereon, by any person or persons interested, for the recovery of so much as may be due to them respectively: *Provided, however*, That the liens thereby created shall cease at the expiration of five years from the time of the entry aforesaid, unless revived by *scire facias* in the manner by law directed, in the cases of judgments in the courts of common law: *And provided further*, That in case of an appeal from the Orphans' Court, the liens shall be for no more than for the amount finally found due and decreed in the Supreme Court, and it shall be the duty of the prothonotary of the Common Pleas, on such decree of the Supreme Court being certified to him, to enter on his docket the amount so found due and decreed by the Supreme Court, and if such amount be greater than that decreed by the Orphans' Court, the lien for such excess shall take effect only from the time of entering the decree of the Supreme Court; but if the amount be reduced by the final decree of the Supreme Court, the prothonotary shall reduce the amount originally entered on his judgment docket and index accordingly, and such final decree, upon appeal being certified and filed in the said Court of Common Pleas, the said term of five years shall be counted from the time of such entry.

"When the executor, administrator, guardian or other accountant shall have fully paid and discharged the amount of such lien, the parties who have received payment shall acknowledge satisfaction thereof, to the extent of what they have received, on the record of the Court of Common Pleas; and in case of neglect or refusal so to do, for the space of thirty days after request in writing and tender of all the cost, such party shall forfeit and pay to the party aggrieved, the sum of fifty dollars, absolutely, and any further sum not exceeding the amount by such person received, as shall be assessed by a jury on a trial at law; or the Orphans' Court, on due proof to them made, that the entire amount due from such executor, administrator, guardian or other accountant, according to the final settlement of the said account, has been fully paid and discharged, may make an order for their relief from such recorded lien, which order, being certified to the Court of Common Pleas, shall be entered on their records, and shall enure and be received as a full satisfaction and discharge of such lien." See, in regard to the limitation of five years, *Oliver's Appeal*, 5 *Outerbridge*, 299.

As to distribution of the interests of minors by guardians amongst them as they come of age.

The term distribution is in strictness referable to the division of money or personal property, or to the proceeds of real estate, and not to real estate simply, with regard to which the terms "descent" and "partition" are more properly applicable. See *Grider v. McClay*, 11 Sergeant & Rawle, 232; in which case it was decided that, where one died intestate seized of land, but not leaving personal estate sufficient to pay his debts, and the land was sold under a decree of the Orphans' Court for that purpose, and a surplus remained, which was paid to the guardians of the intestate's only child who died in infancy, the said surplus was to go to the personal representative of the infant.

A guardian may make distribution amongst his wards of the estate without settling his accounts in the Orphans' Court, but in such case he is liable as an administrator would be for an improper distribution. See *Flory v. Becker*, 2 Barr, 470; also section 58 of Act of 24th February, 1834, Pamphlet Laws, 73, relating to executors and administrators. When an account has been settled in the Orphans' Court and a balance appears to be in the hands of the accountant, the court has jurisdiction over the distribution. *Hood on Executors*, 168.

The general rule in the settlement of the accounts of executors or administrators is as follows:

1st. The personal estate must be first exhausted, and if sufficient to pay the debts and special legacies of decedent the balance is paid over to either the residuary legatee, or if the decedent died intestate to the parties entitled under the intestate Act of 8th of April, 1833.

2d. If the personal estate be insufficient to pay as aforesaid, resort may be had to the Orphans' Court for

an order to sell sufficient of the real estate, under the Act of 24th February, 1834, Pamphlet Laws, 73.

3d. If the whole estate be insufficient to pay the debts and special legacies, then the executors or administrators will proceed to pay in full in the order as follows:

1st. Under the Act of Congress of 3d March, 1797, section 5, all debts due by the decedent to United States: Provided, due notice of such be given to the executor or administrator. *United States v. Fisher*, 2 Cranch, 391.

2d. Under the Act of Assembly of 24th February, 1834, section 24, which provides for the payment out of a decedent's estate as follows:

1st. "Funeral expenses, medicine furnished, and medical attendance given during the last illness of the decedent, and servants' wages not exceeding one year;" if there be not sufficient to pay all of these, then *pro rata*.

2d. Rents not exceeding one year.

3d. "All other debts without regard to the quality of the same, except debts due the Commonwealth, which shall be last paid," and in regard to the latter, if there be not sufficient to pay all, then *pro rata*; but it must be remembered that when there are liens on the real estate, these come in *first* in regard to the money derived from the real estate. Moreover, the Act of 14th April, 1851, Pamphlet Laws, 613, gives a preference (except as to liens for purchase-money for the real estate over all of these) to the \$300 allowed to the widow and children of the decedent under the said act.

When there be sufficient to pay all the above mentioned and a surplus over, it goes either to the residuary legatee if there be a will, or as provided by the intestate Act of 8 April, 1833.

However, the Act of 9 April, 1872, Pamphlet Laws, 47, with the amendment to it of June 13, 1883, Pam-

phlet Laws, 117, makes money due to servants for services rendered six months prior to the death of decedent, a lien on the real estate of the decedent preferred to other liens of record. See Acts.

The foregoing relates to the duties of executors and trustees in making distribution, but is instructive to guardians and minors desirous of knowing their rights.

The rights of a guardian to compensation :

A guardian is entitled to a fair commission on the moneys of his ward's estate passing through his hands, and those commissions are not to be deducted at the foot of the final account, but from time to time when earned. Say's Executors *v.* Barnes, 4 Sergeant & Rawle, 114. Nor is he entitled to commission on interest charged against himself. Ibid.

If the estate be small 5 per cent. is a reasonable charge. Pusey *v.* Clemson, 9 Sergeant & Rawle, 204; Askew *v.* Odenheimer, 1 Baldwin, 380. And in some cases a larger commission may be charged. Askew *v.* Odenheimer, 1 Baldwin, 380.

Where a guardian uses money of his ward, and pays her interest thereon, he is her debtor, and is not entitled to charge commissions in his account on these payments. Livingood's Appeal, 2 Pennypacker, 70.

SIXTH.

OF THE SURETY IN THE BOND.

SECTION VI.

His Liabilities.

1st. He may be cited by the Orphans' Court.

In a case in the Orphans' Court of Philadelphia, it was ordered by the court, that a surety who had become a non-resident, and had no property within the jurisdiction of the court, and who had obtained from the guardian certain property belonging to the estate, and claimed to be in lawful possession thereof, should surrender the said property to the guardian, if she entered additional security, or, if she failed to give this, to the depositary of the court. *Tobin's Estate*, 11 Weekly Notes of Cases, 483.

2d. As to the power of the court to release the surety.

While it is discretionary with the Orphans' Court to exact security from the guardian after his appointment, it has yet no power to release a surety, as the ward has a vested interest in the security. See *Rosenbach v. Commonwealth*, 34 Legal Intelligencer, 250; also *Newcomer's Appeal*, 7 Wright, 43. And in this latter case when a bond given had been marked cancelled, it was held not to be error in the Orphans' Court to order the word cancelled to be stricken off.

In the case of *Rosenbach v. The Commonwealth*, 34 Legal Intelligencer, 250; the guardian gave bond with one surety, and subsequently was permitted by the Orphans' Court to withdraw the bond and substitute another with two sureties, afterwards the guardian was discharged and ordered to pay the moneys in his hands to his successor,

failing to do this, suit was brought against the sureties in the second bond, who defended by alleging that the substitution of the second bond was a nullity, and that the only true and official bond was the first one, judgment was given against the sureties, which was affirmed by the Supreme Court on the ground that the power of the Orphans' Court to permit further and other securities to be given, protected the second bond.

In *Lloyd v. Commonwealth*, 35 Legal Intelligencer, 171, the guardian had filed his original bond with three sureties. Subsequently certain real estate belonging to the minors was sold under proceedings in partition, and the guardian was authorized to petition to receive the proceeds and enter another bond. Subsequently the guardian's accounts were adjudicated and a large amount found to be in his hands belonging to the estate, suit was brought for this against the sureties on the first bond, who denied their liability for so much as the guardian had recovered from the sale of the real estate, because special securities had been entered under order of the Orphans' Court. The Supreme Court, however, held that the sureties in the first bond were liable for the whole amount.

In *Blauser v. Deihl*, 9 Norris, 350, the guardian received an order to sell the ward's property for the purposes of maintenance, education, and reinvestments, and entered a new bond for the faithful application of the proceeds which was approved by the Orphans' Court. In the suit subsequently entered, it was held that the sureties upon the original bond were not liable for the amount realized by the sale. The distinction between this case and that of *Lloyd v. Commonwealth*, 35 Legal Intelligencer, 171, was held to be as follows: "In the one case the guardian takes the property by virtue of his original power; in the other only by virtue of a new

power, conferred by the order of sale, and this also distinguishes the responsibilities of the two classes of sureties; they are independent and their obligations are distinct." See the parallel case of *Beale's Executors v. Commonwealth*, 17 Sergeant & Rawle, 392, upon the liabilities of sureties on an administrator's bond.

Where the guardian sold the real estate of wards under one order of the Orphans' Court, but by two separate sales, and entered two different bonds for the application of the purchase-money derived from each sale, it was held that the surety on the first bond was liable for the amounts realized on both sales, there being no restriction of his liability expressed in the bond. *Rutherford v. Commonwealth*, 7 Weekly Notes of Cases, 534.

3d. As to actions upon the surety bond.

No suit against the guardian or the sureties upon the bond can be maintained until the guardian's liability has been fixed in the Orphans' Court, which alone has jurisdiction in this regard. *Commonwealth v. Raser*, 12 P. F. Smith, 436. But where the Orphans' Court has fixed the liability of the guardian by a decree, the security bond may be sued on in the common law courts. *Ibid.*; see also *Denison v. Cornwell*, 17 Sergeant & Rawle, 374.

When a decree was made by the Orphans' Court directing a guardian to pay to his successor a certain balance, which decree had not been appealed from, in a suit entered upon the security bond it was held by the Supreme Court that the decree of the Orphans' Court was conclusive and that there could be no defence except payment. *Commonwealth v. Gracey*, 38 Legal Intelligencer, 104; 28 Pittsburgh L. J., 209.

When a guardian was appointed for minors resident in another county, which guardian absconded, in a suit against the surety on the bond the plea was that the Orphans' Court had no power to make the appointment

or to take the bond, it was held by the Supreme Court that the guardian having acted and received money under the appointment, he and his surety were estopped from setting up want of jurisdiction in the court making it. *McClure v. Commonwealth*, 1 Weekly Notes of Cases, 31.

The practice in actions upon guardians' and other official bonds is regulated by the 6th section of Act of 14 June, 1836, Pamphlet Laws, 639, as follows :

"Every bond and obligation which shall be given to the Commonwealth by any public officer, or by any person appointed under authority of law to execute any public trust ; also every bond which shall be given by any executor, administrator, guardian, committee, assignee, receiver or trustee, with intent, in every of the said cases, to secure the faithful execution of the respective offices, employment or trust, and for the use of all such persons and bodies politic and corporate, as may be affected by the official acts or neglect of such officer or person, may be sued and prosecuted in the manner following, to wit :

"1. The writ shall in such case be issued in the name of the Commonwealth, and the names of the persons by whom the same shall be sued out shall be suggested as plaintiffs therein, and such persons shall be liable for the costs of the suit, in like manner as plaintiffs in other cases.

"2. If two or more persons, having several interests, shall join in suing such writ, it shall be lawful for them to declare separately thereon, and set forth in their declarations respectively, the breaches of the condition of such bond or obligation, which shall have been made to their particular injury, or they may join in declaration thereon, and afterwards in their replications, or otherwise, according to the course of practice in like cases, set forth upon the record the breaches of the condition aforesaid.

"3. It shall be lawful for any other person to whom a cause of action shall have accrued on such bond or obligation, at any time before judgment, upon a suggestion filed with leave of the court, to be made party plaintiff in such writ, and thereupon, he may declare and set forth the breaches of condition of such bond or obligation, to his particular injury, as aforesaid.

"4. The obligors in any such bond or obligation may plead performance of the condition thereof, so far as it respects the persons by whom such writ was sued, or any of them, and if such fact be confessed or found, such persons shall be debarred of their action upon that writ.

"5. If several persons shall join as aforesaid, in any such writ, and if issues be taken by them separately from each other, against the defendants, it shall be lawful for them to have a separate trial thereof, or at their election, such issues may be tried at the same time, and if they be issues in fact, by one and the same jury.

"6. The parties to any issue taken as aforesaid, shall be liable for the cost of the trial thereof, in like manner as if they only were parties in the proceeding.

"7. If judgment, upon all issues taken as aforesaid, be rendered for the defendants, such judgments, and the pleadings and proceedings upon which they

shall be founded, shall not estop, debar or otherwise affect the action which any other person, or body politic or corporate, may at any time have upon such bond, nor shall such judgment debar any action which the said plaintiffs may have therein for any subsequent breach or cause.

"8. If final judgment be rendered against the defendants, upon any issue taken as aforesaid, such judgment shall be as follows, to wit :

"*First*, for the Commonwealth, in the amount of such obligation or bond.

"*Second*, for the plaintiff in such issue, in the amount of damages assessed, and for the costs accrued between such plaintiff and the defendants.

"9. The judgment of the Commonwealth as aforesaid, shall remain for the satisfaction of all persons entitled to the benefit of the bond or obligation upon which it was rendered, and for all and singular, the like uses and purposes; but the said judgment shall not be a lien upon the real estate of the defendants, unless the Commonwealth shall have commenced the action, nor shall execution hereof be had, except in the manner hereinafter provided.

"10. The judgment for the plaintiff in such issue, as aforesaid, shall be a lien upon the real estate of the defendants, to the amount thereof, and such plaintiff may have execution thereof, on a writ of *scire facias*, or other action thereon, in like manner as may be had in the case of judgments in other personal actions.

"11. In all cases where the condition of any such bond shall be broken, after a judgment rendered for the Commonwealth, as aforesaid, it shall be lawful for the party aggrieved, to proceed by a writ of *scire facias* upon such judgment, suggesting his interest therein, to assess and recover the damages which he shall have sustained, in the manner hereinbefore provided in the case of the breach of the condition of a bond taken to secure the performance of a covenant, after a judgment had upon such bond.

"12. Every judgment rendered for the plaintiff in any such writ of *scire facias* shall be of like effect, to all intents and purposes, as judgments obtained by plaintiffs in other personal actions.

"13. It shall be lawful for the sureties in any bond as aforesaid, to pay into court, at any time after suit brought thereon, as aforesaid, the whole amount of the penalty of the bond, with all costs of suit up to that time, and thereupon, they shall be discharged from all further liability by reason thereof; but nothing herein contained shall debar any person of his action, or of his execution against the officer, trustee, or other person for whom such security was given, for any damages which shall not be paid out of such bond."

4th. The rights of the surety.

If the surety has to pay anything upon the surety bond, he is entitled under the general rule of the law to subrogation to the rights and remedies of the ward, both against his co-surety and the principal. See *Hess' Estate*, 19 P. F. Smith, 272; *Wright v. Sewing Machine Company*, 1 Norris, 80; *Kelchner v. Forney*, 5 Casey, 47; *Commonwealth v. Cox*, 12 Casey, 442.

In such a case, a decree in the Orphans' Court award-

ing an attachment against the defaulting guardian, as for contempt in disobeying a former decree, commanding him to pay over a certain sum to the late ward for the use of the paying surety, was affirmed by the Supreme Court. *Leiter's Appeal*, 10 Weekly Notes of Cases, 225.

A special remedy is provided by the Act of 29 March, 1832, Pamphlet Laws, 197, in section 28, as follows :

" Application may be made to the Orphans' Court, or any judge thereof, in the cases mentioned in the twenty-third section of this act, by any surety in the bond of such executor, administrator or guardian, and upon such surety making oath or affirmation, as required in that section, the like proceedings may be had for the purpose of compelling such executor, administrator or guardian to give security, and thereupon the court may order such executor, administrator or guardian to give such counter-securities as they shall judge necessary to indemnify him against loss by reason of his suretyship; and if such executor, administrator, or guardian shall refuse or fail to give such security, within such reasonable time as the court shall order, it shall be lawful for the court to direct such executor, administrator or guardian, to pay, or deliver over forthwith to such surety, or to some other person for him, all goods, chattels, effects and securities whatsoever, for which such surety may be accountable: *Provided*, That such surety shall first give, to the satisfaction of the court, sufficient security, faithfully to preserve and account therefor, and deliver and dispose of the same according to the order of the said court.

The 23d section above referred to was as follows:

" If such executor, administrator or guardian shall neglect or refuse to give such security or such further security so ordered, then the said court shall vacate such letters testamentary or of administration, or remove such guardian, and award new letters, to be granted in such form as the case may require, by the register having jurisdiction upon such security as the court shall think proper; and in the case of a guardian, the court shall proceed to the admission or the appointment of a new guardian, according to the circumstances of the case; and the said court shall moreover order the first executor, administrator or guardian to deliver over and pay to his successor all and every the goods, chattels and estates in his hands, of the decedent or minor, as the case may be."

It is evident that the 28th section intended to refer to the 22d section instead of the 23d; for the reading of the 22d section see *supra*, page 59.

As to forms of bonds and more detailed information on the subject herein sketched, the student is referred to *Orphans' Court Practice*, by Judge Rhone.

SEVENTH.

SECTION VII.

Of the Acquisition, Partition, Mortgaging, and Sale of Ward's Property.

There are but two ways of acquiring property by a minor, to wit:

1st. By descent, which is where property is vested in the minor by the operation of law, on the death of his ancestor or relative under the intestate laws.

2d. By purchase, which is where the property is vested in the minor by his own acceptance of the act of another—the word purchase comprising title as follows:

- (1.) By escheat.
- (2.) By occupancy.
- (3.) By prescription.
- (4.) By forfeiture.

(5.) By alienation, which last is, as relates to a minor, where the property is acquired by either gift, deed, will, or devise.

These means of acquiring property will be treated of at length in the second book of these Commentaries, wherein will be set forth the difference between personal property and real property, the former of which, when derived from an intestate decedent, passes to a minor through the medium of the administrator of such decedent, and when derived from a testate decedent, generally through the medium of the executor named in the will. As to the real property when derived from an intestate parent or other relative, the same passes direct to the minor (unless subject to partition), and should be taken charge of by the minor's guardian; when derived

from a testate parent or other party, it will pass to the minor as provided for in the will of the testator.

Title by Descent.

By the 6th section of the charter to William Penn, A. D. 1681, it was provided that the laws governing property in regard to its descent and succession should be as in England, until altered by William Penn, his heirs or assigns, and by the freemen of the said province; consequently, at that time, lands descended according to the course of the common law—that is to say, in favor of the eldest son, who took all the land to the exclusion of the other children, but subject to the right of dower of the widow.

This, however, was soon changed, as by the Act of March, 1683 (110 law), Duke of York's Laws, 142, a different provision was made, and by the Act of May, 1684 (172 law), Duke of York's Laws, 174, the eldest son became entitled only to a portion double that of the other children. Other intestate acts were passed in 1688, 1693, 1694, 1697, 1700, 1705, and 1764, all of which are referred to in 3 Smith's Laws, 154, to which the reader is referred; but the eldest son's portion remained to be the double until the passage of the Act of 19th April, 1794, 3 Smith's Laws, 143, when the portion of the eldest son was reduced to an equality with those of the other children. It will be well for the student to read the notes to the above act, which are most interesting as showing how the law of descents was in Pennsylvania up to that time.

In regard to the acts of Assembly now in force regulating intestates' estates, they are as follows:

1st. The revised Act of 8th April, 1833, Pamphlet Laws, 316.

2d. The Act of 11th April, 1848, Pamphlet Laws, 537, sections 9 and 10.

3d. The Act of 27th April, 1855, Pamphlet Laws, 368, sections 2 and 3.

4th. The Act of 4th May, 1855, Pamphlet Laws, 431, sections 1, 2, 5, and 8.

5th. The Act of 14th April, 1857, Pamphlet Laws, 507, section 1.

6th. The Act of 17th April, 1869, Pamphlet Laws, 71, section 1.

7th. The Act of 20th April, 1869, Pamphlet Laws, 77, section 1.

8th. The Act of 5th June, 1883, Pamphlet Laws, 88, section 1.

Act of 8th April, 1833, Pamphlet Laws, 316.

AN ACT relating to the descent and distribution of the estates of intestates.

SECTION I. That the real and personal estate of a decedent, whether male or female, remaining after payment of all just debts and legal charges, which shall not have been sold or disposed of by will, or otherwise limited by marriage settlement, shall be divided and "*enjoined*" [enjoyed] as follows, viz. .

Article I. Where such intestate shall leave a widow and issue, the widow shall be entitled to one-third part of the real estate for the term of her life, and to one-third part of the personal estate absolutely.

Article II. Where such intestate shall leave a widow and collateral heirs, or other kindred, but no issue, the widow shall be entitled to one-half part of the real estate, including the mansion house and buildings appurtenant thereto, for the term of her life, and to one-half part of the personal estate absolutely.

Article III. Where such intestate shall leave a husband, he shall take the whole personal estate, and the real estate shall descend and pass as is herein-after provided, saving to the husband his right as tenant by the courtesy, which shall take place, although there be no issue of the marriage, in all cases where the issue, if any, would have inherited.

SECTION II. Subject to the estates and interests hereinbefore given to the widow or surviving husband, if any, the real estate of such intestate shall descend to, and the personal estate not otherwise hereinbefore disposed of shall be distributed among his issue, according to the following rules and order of succession, viz. :

Article I. If such intestate shall leave children, but no other descendant being the issue of a deceased child, the estate shall descend to and be distributed among such children.

Article II. If such intestate shall leave grandchildren, but no child or other

descendant being the issue of a deceased grandchild, the estate shall descend to and be distributed among such grandchildren.

Article III. If such intestate shall leave descendants in any other degree of consanguinity, however remote from him, and all in the same degree of consanguinity to him, the estate shall descend to and be distributed among such descendants.

Article IV. If such intestate shall leave descendants in different degrees of consanguinity to him, the more remote of them being the issue of a deceased child, grandchild, or other descendant, the estate shall descend to and be distributed among them as follows, viz.:

A. Each of the children of such intestate shall receive such share as such child would have received, if all the children of the intestate who shall then be dead, leaving issue, had been living at the death of the intestate.

B. Each of the grandchildren, if there shall be no children, in like manner shall receive such share as he or she would have received, if all the other grandchildren who shall then be dead, leaving issue, had been living at the death of the intestate, and so in like manner to the remotest degree.

C. In every such case, the issue of such deceased child, grandchild, or other descendant, shall take, by representation of their parents respectively, such share only as would have descended to such parent, . . . if they had been living at the death of the intestate.

SECTION III. In default of issue as aforesaid, and subject also as aforesaid to the estates and interests hereinbefore given to the widow or surviving husband, if any, the real estate shall go to the father and mother of such intestate, during their joint lives and the life of the survivor of them; and the personal estate, not otherwise hereinbefore disposed of, shall be vested in them absolutely, or, if either the father or mother be dead at the time of the death of the intestate, the parent surviving such intestate shall enjoy such real estate during his or her life, and such personal estate absolutely.

SECTION IV. In default of issue as aforesaid, and subject to the estates and interests hereinbefore given to the widow or surviving husband, father, and mother, of the intestate, if any, the real estate shall descend to, and the personal estate not otherwise hereinbefore disposed of shall be distributed among the collateral heirs and kindred of such intestate, according to the following rules and order of succession, viz.:

I. If such intestate shall leave brothers and sisters or either of the whole blood, and no nephew or niece, being the issue of a deceased brother or sister of the whole blood, the real estate shall descend to and vest in such brothers and sisters.

II. If such intestate shall leave neither brother nor sister of the whole blood, but nephews, "or" nieces, being the children of such deceased brother or sister, the real estate shall descend to and vest in such nephews and nieces.

III. If such intestate shall leave brothers or sisters of the whole blood, and also nephews or nieces, being the children of any such deceased brother or sister, the real estate shall descend to and vest in such brothers and sisters and nephews and nieces, as follows, viz.: Every such brother and sister shall receive such share as he or she would have received, if all the brothers and sisters who shall then be dead, leaving children, had been living at the death of the intestate, and such nephews and nieces shall take by representation of their parents

respectively, such share only as would have descended to such parents if they had been living at the death of the intestate.

IV. If such intestate shall leave neither brother nor sister of the whole blood, nor any nephew or niece being the child of such deceased brother or sister, the real estate shall descend to and vest in the next of kin of such intestate being the descendants of his brothers and sisters of the whole blood.

V. The personal estate of such intestate, not otherwise hereinbefore disposed of, shall, in the several cases mentioned in this section, be distributed among the brothers and sisters of the intestate, and their issue, in like manner in each of the said cases as is provided for the descent and division of the real estate of the intestate, but without any distinction of blood.

SECTION V. In default of issue, and brothers and sisters of the whole blood and their descendants as aforesaid, and subject to the estates and interests hereinbefore given to the widow or surviving husband, if any, the real estate shall go to and be vested in the father or mother of the intestate, or, if both be living at the time of his death, in the father and mother for such estate as the "*said*" intestate had therein.

SECTION VI. In default of issue and brothers and sisters of the whole blood and their descendants, and also of father and mother competent by this act to take an estate of inheritance therein, the real estate of such intestate, subject to the life estates hereinbefore given, if any, shall descend to and be vested in the brothers and sisters of the half blood of the intestate and their issue in like manner respectively as is hereinbefore provided for the cases of brothers and sisters of the whole blood and their issue.

SECTION VII. In default of all persons hereinbefore described, the real and personal estate of the intestate shall descend to and be distributed among the next of kin to such intestate.

SECTION VIII. *Provided*, That there shall be no representation admitted amongst collaterals, after brothers' and sisters' children.

SECTION IX. *Provided also*, That no person who is not of the blood of the ancestors or other relations from whom any real estate descended, or by whom it was given or devised to the intestate, shall in any of the cases before mentioned take any estate of inheritance therein, but such real estate, subject to such life estates as may be in existence by virtue of this act, shall pass to and vest in such other persons as would be entitled by this act, if the persons not of the blood of such ancestor or other relation had never existed, or were dead at the decease of the intestate.

SECTION X. In default of known heirs or kindred competent as aforesaid, the real estate of such intestate shall be vested in his widow, or, if such intestate were a married woman, in her surviving husband for such estate as the intestate had therein, and in such case the widow shall be entitled to the whole of the personal estate absolutely.

SECTION XI. *And whereas* it is the true intent and meaning of this act that the heir at common law shall not take in any case to the exclusion of other heirs and kindred standing in the same degree of consanguinity with him to the intestate, it is hereby declared that, in every case which may arise not expressly provided for by this act, the real as well as the personal estate of an intestate shall pass to and be enjoyed by the next-of-kin of such intestate, with-

out regard to the ancestor or other relation from whom such estate may have come.

SECTION XII. In default of all such known heirs, or kindred, widow or surviving husband as aforesaid, the real and personal estate of such intestate shall go to and be vested in the commonwealth by escheat.

SECTION XIII. Descendants and relatives of an intestate, begotten before his death and born thereafter, shall in all cases inherit and take in like manner as if they had been born in the lifetime of such intestate.

SECTION XIV. Wherever, by the provisions of this act, it is directed that real or personal estate shall descend to or be distributed among several persons, whether lineal or collateral heirs or kindred standing in the same degree of consanguinity to the intestate, if there shall be only one of such degree, he shall take the whole of such estate, and if there be more than one, they shall take in equal shares, and, if real estate, shall hold the same as tenants in common.

SECTION XV. The shares of the estate directed by this act to be allotted to the widow, shall be in lieu and full satisfaction of her dower at common law.

SECTION XVI. If any child of an intestate shall have any estate by settlement of such intestate, or shall have been advanced by him in his lifetime, either in real or personal estate, to an amount or value equal to the share which shall be allotted to each of the other children of such intestate, such child shall have no share of the real or personal estate of such intestate, and if such settlement or advancement be to an amount or value less than the share to which he would otherwise be entitled if no such advancement had been made, then so much only of the real and personal estate of such intestate shall be allotted to such child as shall make the estate of all the said children to be equal as near as can be estimated.

SECTION XVII. The provisions of this act relative to descent and distribution of real and personal estate among the descendants and collateral relations of intestates shall be construed to mean such persons only as may have been born in lawful wedlock.

SECTION XVIII. The residue of the proceeds of the sale of any real estate of an intestate, made by authority of law for the payment of debts, shall vest in the persons entitled by this act to such real estate, in such proportions and for the like interests respectively as they may have had in such real estate.

SECTION XIX. All such of the intestate's relations and persons concerned, who shall not lay legal claim to their respective shares within seven years after the decease of the intestate, shall be debarred from the same for ever: *Provided*, That, if any such relation or person shall, at the time of the decease of the intestate, be within the age of twenty-one years, or a married woman, he or she shall be entitled to receive and recover the same, if he or she shall lay legal claim thereto, within seven years after coming to full age or discovery.

SECTION XX. Nothing in this act contained relative to "a" distribution of personal estate among kindred shall be construed to extend to the personal estate of an intestate whose domicil at the time of his death was out of this commonwealth.

SECTION XXI. This act shall take effect from and after the first day of October next, and so much of any act of Assembly as is hereby altered or supplied

is repealed from and after said day, except so far as may be necessary to complete the settlement and disposition of the estate of any person who may have died before that time.

Act of 11th April, 1848, Pamphlet Laws, 537.

SECTION IX. When any married woman, possessed of separate personal property as aforesaid, shall die intestate, her husband shall be first entitled to letters of administration on her estate, which said estate shall be distributed as follows: If such married woman shall leave no children, nor the descendants of such living, the husband shall be entitled to such personal estate absolutely; if such married woman shall leave a child, or children living, her personal estate shall be divided amongst the husband and such child or children, share and share alike; if any of such child or children being dead, shall have left issue, such issue shall be entitled to the share of the parent.

SECTION X. The real estate of such married woman, upon her decease, shall be distributed as provided for by the intestate laws of this commonwealth now in force: *Provided*, That nothing contained in this act shall be deemed or taken to deprive the husband of his right as tenant by courtesy.

Act of 27th April, 1855, Pamphlet Laws, 368.

SECTION II. Amongst collaterals, when by existing laws entitled to inherit, the real and personal estate shall descend and be distributed among the grandchildren of brothers and sisters, and the children of uncles and aunts, by representation, such descendants taking equally among them such share as their parent would have taken if living.

SECTION III. Illegitimate children shall take and be known by the name of their mother, and they and their mother shall respectively have capacity to take or inherit from each other, personal estate, as next of kin, and real estate, as heirs in fee simple; and, as respects said real or personal estate so taken and inherited, to transmit the same according to the intestate laws of this State.

Act of 4th May, 1855, Pamphlet Laws, 430.

SECTION I. The power of any married woman to bequeath or devise her property by will shall be restricted, as regards the husband, to the same extent as the husband's power so to dispose of his property is restricted, as regards the wife, namely: so that any surviving husband may, against her will, elect to take such share and interests in her real and personal estate as she can, when surviving, elect to take against his will in his estates, or otherwise to take only as tenant by the courtesy: *Provided*, That nothing herein contained shall affect the right or power of the wife, by virtue of any authority or appointment, contained in any deed or will, to grant, bequeath, devise as heretofore, any property held in trust for her sole and separate use.

SECTION II. Whensoever any husband, from drunkenness, profligacy, or other cause, shall neglect or refuse to provide for his wife, or shall desert her, she shall have all the rights and privileges secured to a *feme sole* trader, under the Act of the 22d of February, 1718, entitled "An act concerning *feme sole* traders,"

and be subject as therein provided. And her property, real and personal, howsoever acquired, shall be subject to her free and absolute disposal during life, or by will, without any liability to be interfered with or obtained by such husband, and, in case of her intestacy, shall go to her next of kin, as if he were previously dead.

SECTION V. No husband, who shall have as aforesaid, for one year or upwards previous to the death of his wife, wilfully neglected or refused to provide for his wife, or shall have, for that period or upwards, wilfully and maliciously deserted her, shall have the right to claim any right or title in her real or personal estate after her decease, as tenant by the courtesy, or under the intestate laws of this commonwealth.

SECTION VII. It shall be lawful for any person, desirous of adopting any child as his or her heir, or as one of his or her heirs, to present his or her petition to such court in the county where he or she may be resident, declaring such desire, and that he or she will perform all the duties of a parent to such child. And such court, if satisfied that the welfare of such child shall be promoted by such adoption, may, with the consent of the parents or surviving parent of such child, or, if none, of the next friend of such child, or of the guardians or overseers of the poor, or of such charitable institution as shall have supported such child for at least one year, decree that such child shall assume the name of the adopting parent, and have all the rights of a child and heir of such adopting parent, and be subject to the duties of such child, of which the record of the court shall be sufficient evidence: *Provided*, That if such adopting parent shall have other children, the adopted shall share the inheritance only as one of them in case of intestacy, and he, she, or they shall respectively inherit from and through each other, as if all had been the lawful children of the same parent.

Act of 14th April, 1857, Pamphlet Laws, 507.

SECTION I. In any and every case where the father and mother of an illegitimate child or children shall enter into the bonds of lawful wedlock and cohabit, such child or children shall thereby become legitimated, and enjoy all the rights and privileges, as if they had been born during the wedlock of their parents.

Act of 17th April, 1869, Pamphlet Laws, 71.

SECTION I. Whenever any *cestui que trust* has heretofore, or shall hereafter die intestate, without heirs or any known kindred, a widow or surviving husband, the beneficial interest of such *cestui que trust* in any property or effects, real, personal, or mixed, shall escheat to the commonwealth, subject to all legal demands on the same.

Act of 20th April, 1869, Pamphlet Laws, 77.

SECTION I. In case any person has died, or shall hereafter die, leaving a widow and a last will and testament, and such widow shall elect not to take under the will, in lieu of dower at the common law, as heretofore, she shall be

entitled to such interest in the real estate of her deceased husband as the widows of decedents dying intestate are entitled to under the existing laws of this commonwealth.

Act of 5th June, 1883, Pamphlet Laws, 88.

SECTION I. That illegitimate children, born of the same mother, and leaving neither mother nor issue capable of inheriting surviving, shall have capacity to take and inherit from each other personal property as next of kin, and real estate as heirs in fee simple, in the same manner as children born in lawful wedlock. This act shall apply to all cases now pending, where the estate of such illegitimate has not been actually paid to, and received by the commonwealth, as well as to all such cases happening after the passage of this act.

In regard to decisions on the foregoing acts, I will only mention a few, viz. :

(1.) Estates tail are not within the intestate acts, but descended to the heir at common law. Guthrie's Appeal, 1 Wright, 9.

(2.) Real estate vested in a trustee for a wife not subject to the control of the husband descends to the heirs of the wife, excluding the husband from the courtesy. Rigler v. Cloud, 2 Harris, 361.

(3.) Where a testator makes no disposition of his residuary estate, it passes under the intestate laws. Hooffner v. Wynkoop, 1 Outerbridge, 130.

(4.) Grandchildren whose father died before the intestate take by representation, subject to the indebtedness of their deceased parent to the estate of the deceased intestate. Hughes's Appeal, 7 P. F. Smith, 179.

(5.) Nephews and nieces take *per capita*, and when a nephew or niece be deceased the children of such take amongst them the share of the deceased parent. Krout's Appeal, 10 P. F. Smith, 380.

(6.) A mother cannot inherit from a daughter lands which descended from the father where there exists one of the father's blood, as she is not of the blood. McWilliams v. Ross, 10 Wright, 369.

(7.) Where an intestate leaves only a widow she will

inherit under the 10th section of the Act of 1833. *Broad Top Coal and Iron Company v. Riddlesburg Coal and Iron Company*, 15 P. F. Smith, 435.

(8.) Grandparents inherit personal estate in preference to uncles or aunts, and are liable for collateral inheritance-tax. *McDowell v. Addams*, 9 Wright, 430.

(9.) Before the Act of 27th April, 1855, the children of a deceased uncle or aunt did not inherit, if an uncle or aunt was still living. *Parr v. Bankhart*, 10 Harris, 291.

(10.) When all the heirs are equally related to the intestate, each takes in his own right ; but when not, the more remote takes the share which the deceased parent would have taken. *Miller's Appeal*, 4 Wright, 387.

(11.) The estate of an intestate will not escheat to the commonwealth for want of heirs of the blood of the ancestor, so long as there be a next of kin to the intestate. *Dowell v. Thomas*, 1 Harris, 41.

(12.) The real estate of an intestate, coming on the part of his father, descends to the next of kin on the father's side to the exclusion of the maternal kindred. *Bevan v. Taylor*, 7 Sergeant & Rawle, 397 ; *Lewis v. Gorman*, 5 Barr, 164.

As to other decisions on the subject, see "Orphans' Court Practice in Pennsylvania," by Judge Rhone.

Since the Acts of 27th April, 1855, and 5th June, 1883, *supra*, illegitimates are capable of inheriting from their mother and from each other.

When real estate descends to a minor, it is the duty of the guardian (unless the occupancy thereof pertains to the father as tenant by the courtesy) to enter into possession and lease the same.

Title by Purchase.

The minor may acquire property by purchase, and this though possible by occupancy or by prescription or

forfeiture, as when an estate is vested in a widow, to be enjoyed by her during her widowhood only, and she forfeits the same by marrying again, but as a general rule the only way a minor acquires property by purchase is by alienation, to wit :

1st. By gift as to personal property.

2d. By conveyance as to real estate.

3d. By will or devise as to either personal or real property.

It is true that a minor may purchase land with his own earnings, but when he becomes of age he may avoid the purchase, and refuse to pay the part of the purchase-money unpaid.

A guardian cannot make use of the ward's money in the purchase of real estate, unless when authorized by the proper court under the 2d section of Act of 13th April, 1854, Pamphlet Laws, 368.

Investments of "trust" moneys were authorized to be made in certain stocks and in real securities by the 14th section of the Act of 29th March, 1832, Pamphlet Laws, 190, and this authority was subsequently extended to other securities by Acts of 8th April, 1851, Pamphlet Laws, 365, 9th April, 1856, Pamphlet Laws, 275, 14th February, 1863, Pamphlet Laws, 45, 23d March, 1865, Pamphlet Laws, 716, 1st April, 1870, *Pamphlet Laws*, 45, 10th June, 1871, Pamphlet Laws, 386, 29th March, 1872, *Pamphlet Laws*, 31, 2d April, 1873, Pamphlet Laws, 59, 4th April, 1873, Pamphlet Laws, 59, and 8th May, 1876, Pamphlet Laws, 133 ; but the Constitution of 1874, in Article III., section 22, prohibits the investment of trust-funds in the bonds or stocks of private corporations, so that such investments can now only be made as follows :

1st. Under the provisions of the 14th section of the Act of 29th March, 1832, Pamphlet Laws, 190.

2d. Under the provisions of the 11th section of the Act of 8th April, 1851, Pamphlet Laws, 365.

3d. Under the provisions of the 1st section of the Act of 9th April, 1856, Pamphlet Laws, 275.

4th. Under the provisions of the 1st section of the Act of 14th February, 1863, Pamphlet Laws, 45.

5th. Under the provisions of the 1st section of the Act of 23d March, 1865, Pamphlet Laws, 716.

6th. Under the provisions of the 1st section of the Act of 10th June, 1871, Pamphlet Laws, 386.

7th. Under the provisions of the 1st section of the Act of 2d April, 1873, Pamphlet Laws, 59.

8th. Under the provisions of the 1st section of the Act of 8th May, 1876, Pamphlet Laws, 133.

The last act makes it legal to invest funds held by a guardian, executor, administrator, or trustee in bonds or certificates of debts issued by any of the counties, cities, school districts, or municipal corporations of the commonwealth.

In regard to investment in real estate, under the Act of 13th April, 1854, *supra*, the text of the 2d section of the act is as follows :

"SECTION 2. It shall and may be lawful for any trustee, committee, guardian, or other person, acting in a fiduciary capacity, to invest trust moneys in ground-rents, or other real estate, by leave of the proper court under proceedings as aforesaid, as provided by the act to which this is a supplement: *Provided*, That it shall be the opinion of the court that such investment shall be for the advantage of the estate, and no change be made in the course of succession by such change of investment, as regards the heirs or next of kin of the *cestui que trust*."

The Act to which the foregoing was a supplement is that of 18th April, 1853, Pamphlet Laws, 503, which, authorizing sales to be made of a minor's realty in certain cases, provides in the 6th section that the proceeds of such realty shall be substituted for the real estate sold, as regards the enjoyment and ownership, but may be ex-

pended for the maintenance and education of the ward, or for the payment of liens on his other real estate.

It is seen that purchases made under the foregoing acts are rather an exchange of personal property into real than an acquisition of value.

Minors may also acquire title to property by legacy or devise. When such occurs by legacy it refers to personal property, and when by devise it relates to real estate. In regard to the control and management of such acquisitions, the same is provided for generally by the wording of the will, but if there be nothing in this to the contrary, such property becomes subject to the control of the guardian.

The right to devise lands in fee simple was, from the time of William the Conqueror to that of Henry VIII., existent only in Kent and some minor localities in England, but in the reign of the latter monarch, by statute 32 Henry VIII., c. 1, explained by statute 34 Henry VIII., c. 5, the right was given to all persons except feme coverts, infants, and idiots to devise two-thirds of the land held by them in chivalry and all held in socage. As tenure in chivalry was reduced to tenure in socage by the statute of Charles II., in 1660, all lands except copyhold became devisable. Consequently, after the charter to Penn, in 1681, all lands in Pennsylvania were devisable, as is seen by the 15th paragraph of the laws agreed upon in England, Duke of York's Laws, 100, which provided "that all wills and writing attested by two witnesses shall be of the same force as to lands as other conveyances, being legally proved within forty days, either within or without the said province." The Act of 1705, 1 Smith's Laws, 33, concerning wills, which was compiled from the English statute of 29 Charles II., c. 3, was affected by the Act of 15th March, 1832, Pamphlet Laws, 135, and superseded by the Act of

8th April, 1833, Pamphlet Laws, 249. Though a chronological synopsis of the acts of Assembly in force now may not be the clearest way of imparting to the student the law on the subject, it is the plan adopted, and as such will be followed.

Synopsis of the Acts now in force.

(1.) The Act of 12th March, 1800, 3 Smith's Laws, 433, in sections 1, 2, 3, 4, and 5, provided as follows:

In section 1, that, in cases wherein testators devise their real estate to executors to be sold, in case of the death of one, the remaining may act.

The 2d section provides, that, where one of the executors refuses to act, the remaining ones may do so with equal authority.

The 3d section provides, that, where the executor is dead or has renounced, and letters of administration with the will annexed have been granted, the administrator with the will annexed may exercise the powers delegated to the deceased executor.

The 4th section provides, that, when an executor has been discharged, the remaining may act, or when all the executors be discharged, the administrator appointed.

The 5th section provides that nothing in the act shall prevent any testator from providing otherwise by his will.

(2.) The 10th section of the Act of 13th March, 1815, 6 Smith's Laws, 289, provides that any woman divorced for adultery, who shall openly cohabit with the partaker of her crime, shall be incapable of alienating her hereditaments.

(3.) The 7th section of the Act of 15th March, 1832, Pamphlet Laws, 136, provides that the register of wills may issue a citation to any person alleged to have posses-

sion of the will of a decedent, requiring such person to produce the same.

The 8th section of the same act authorizes the register to issue a citation to any witness to a will, requiring him to appear and testify.

The 9th section empowers the register to issue commissions to take the testimony of absent witnesses.

The 10th section provides that no nuncupative will shall be admitted to probate till fourteen days after the death of the decedent be expired, nor unless process have first issued to call in the widow, if any, and such of the relations, or next of kin, as would be entitled to administration in case of intestacy.

The 11th section provides that no testimony shall be received to prove a nuncupative will after six months from the speaking of the testamentary words, unless the testimony were committed to writing within six days after the making of the will.

The 12th section provides that copies of wills proved in any other State or country, according to the laws thereof, may be offered for probate, and proceedings be had thereon, etc.

The 17th section provides that all original wills, after probate, and copies of all original wills produced under the provisions of the act, shall be recorded and filed by the register of the respective county, and shall remain in his office, except when required to be had before some higher tribunal, etc.

(4.) The 1st section of the Act of 8th April, 1833, Pamphlet Laws, 249, provides that every person of sound mind (married women excepted) may dispose by will of his or her real estate, whether such estate be held in fee simple, or for the life or lives of any other person or persons, and whether in severalty, joint tenancy or common, and also of his or her personal estate.

(The exception of married women was done away with by Act of 11th April, 1848, *infra*.)

The 3d section of the said Act of 1833 is as follows :
“*And provided also*, That no will shall be effectual unless the testator were, at the time of making the same, of the age of twenty-one years or upwards, at which age the testator may dispose of real as well as personal or mixed property, if in other respects competent to make a will.”

The 5th section provides that the emblements on lands held by a widow or other tenant for life, also rents and other periodical payments accruing to a tenant for life or other person entitled by law, may, so far as accrued on the death of such tenant, be disposed of by will.

The 6th section provides that every will shall be in writing, and, unless the testator be prevented by his last sickness, be signed by him at the end, or by some person in his presence and by his direction, and be proved by two or more persons.

The 7th section provides that personal property may be bequeathed by a nuncupative will under the following restrictions :

1. Shall be made during the last sickness of the testator in the house of his habitation, or where he has resided ten days or more next before making the will, except when surprised by sickness, being from home, and shall die before returning.

2. When the value bequeathed exceeds \$100, it shall be proved that the testator at the time did bid the persons present, or some of them, to bear witness that such was his will, and this must be proved by two witnesses who were present.

The 8th section provides that, notwithstanding the act, any mariner at sea, or soldier in actual military service, may dispose of his movables, wages, and personal estate.

The 9th section provides that all devises of real estate shall pass the whole estate of the testator in the premises, though there be no words of inheritance or perpetuity, unless it appear in the will that the testator intended to devise a less estate.

The 10th section provides that real estate, acquired by a testator after making his will, shall pass by a general devise, unless a contrary intention is manifest in the will.

The 12th section provides that no devise or legacy, in favor of a child or other lineal descendant, shall be deemed to lapse or become void, by reason of the decease of such legatee.

The 14th section provides that no will in writing concerning personal estate shall be repealed, or bequest altered, otherwise than is provided in the case of real estate, except by a nuncupative will committed to writing during the life of the testator, and read to him, and so proved by two witnesses.

The 15th section provides that when any person shall make his last will and shall afterwards marry, or shall have a child, not provided for in the will, and shall die, leaving a widow and child, though such child shall be born after his death, such person, so far as regards the widow or child, shall be deemed to die intestate.

The 16th section provides that a will executed by a single woman shall be deemed revoked by her subsequent marriage, and shall not be revived by the death of her husband.

The 17th section provides that nothing in the act shall be construed to apply to the disposition of personal estate by a testator whose domicil is out of the commonwealth.

(5.) The 12th section of Act of the 24th February, 1834, Pamphlet Laws, 73, provides that all powers, authorities and directions, relating to real estate in any will, not given by name or description, shall be deemed to be given

to the executors under the direction of the Orphans' Court.

The 13th section provides that the executors to whom is given a naked authority to sell real estate shall have full authority as to entry and sale as if the same had been devised to them to be sold, saving to the testator the right to direct otherwise.

The 14th section provides that the survivor or remaining executor—when the devise was for the executors to sell—shall have the same powers as all the executors named would have had.

The 19th section provides that where any sale shall be made by an authorized executor for any purpose, the purchaser may pay the purchase-money into the Orphans' Court, to be disposed of in accordance with the will.

(6.) The 2d section of the Act of 6th May, 1844, Pamphlet Laws, 565, provides that no devise or legacy thereafter made in favor of a brother or sister, or of the children of a deceased brother or sister, the testator not leaving lineal descendants, shall lapse by the death of such devisee or legatee, if such leave issue surviving the testator, unless otherwise directed by the testator.

(7.) The 1st section of the Act of 27th January, 1848, Pamphlet Laws, 16, provides that every will, theretofore or thereafter made, to which the testator's name is subscribed by his direction, or to which he has made his mark, shall be valid: *Provided*, the other requisites be fulfilled.

(8.) The 7th section of the Act of 11th April, 1848, Pamphlet Laws, 536, provides that any married woman may dispose by will of her separate property, real, personal or mixed, whether the same accrue to her before or during coverture: *Provided*, the will be executed in the presence of two witnesses, neither of whom shall be her husband, etc.

(9.) The 11th section of the Act of 26th April, 1855, Pamphlet Laws, 332, provides that no estate shall be bequeathed or devised to any body politic, or to any one in trust for religious or charitable uses, except by deed or will attested by two witnesses one calendar month before the death of the testator, unless for a valuable consideration.

(10.) The 1st section of the Act of 4th May, 1855, Pamphlet Laws, 430, provides, that the power of a married woman to bequeath or devise her property by will shall be restricted as regards the husband to the same extent as the husband's power to dispose of his property is restricted as regards the wife, so that he may, against her will, elect to take such share or interest in her real and personal estate as she can take against his will: *Provided*, that nothing in the act shall affect her right by virtue of appointment to devise property held for her separate use.

(NOTE.—At common law the husband could not by will deprive his wife of her dower, but as seen in the case of *Hamilton v. Buckwalter*, 2 Yeates, 389, the acceptance of a devise by a wife from a husband was considered a bar to her dower; however, in the case of *Wehh v. Evans*, 1 Binney, 565, it was held that the devise was not a bar. The 11th section of the Act of 8th April, 1833, Pamphlet Laws, 249, provides that a devise shall be a bar, unless the testator otherwise provide, so that the wife cannot have both. The act, however, provides that nothing therein contained shall deprive her of her choice. The 11th section of the Act of 11th April, 1848, Pamphlet Laws, 537, provides that when the widow elects to not take under the will of her husband, the so-doing shall not deprive her of her share of her personal estate under the intestate law. Therefore, she gets the life estate in one-third of the realty and her share of the personal estate; viz., one-third when there be children, one-half when there be none; and in the same way, under the Act of 1855, the wife cannot by her will deprive her husband of the right to take against her will to the same extent. *Dickinson v. Dickinson*, 11 P. F. Smith, 401.)

(11.) The seventh section of the Act of 22d April, 1856, Pamphlet Laws, 533, provides that the probate of a will devising real estate shall be conclusive as to such, unless controverted within five years.

(12.) The 1st section of the Act of 14th April, 1868, Pamphlet Laws, 97, provides that where, in wills or conveyances for life or other period of time, any building is devised or set out to any one, without defining the boundaries of the lot necessary for the enjoyment of the same, the parties may apply to the Orphans' Court for the appointment of commissioners to define the same.

The 2d section of the act authorizes the court to appoint three such commissioners.

The 3d section points out the duties of such commissioners.

The 4th section provides that the costs shall be equally divided amongst the parties.

(13.) The 1st and 2d sections of the Act of 17th April, 1869, Pamphlet Laws, 72, provides that when, in a will directing real estate to be appraised and sold, the testator has not indicated who should make the appraisement thereof, the parties interested may apply to the Orphans' Court, which is authorized to appoint the appraisers.

The 3d, 4th, 5th, and 6th sections relate to the confirmation of the appraisement and the award of the real estate, etc.

(14.) The 1st section of the Act of 4th June, 1879, Pamphlet Laws, 88, provides that every will shall be construed, with reference to the estate therein comprised, to take effect as if executed immediately before the death of the testator, unless a contrary intention appear in the will.

The 2d section provides that all lapsed and void devises shall be included in the residuary devise.

The 3d section provides that a devise of the real estate of a testator and a bequest of the personal estate or of any real or personal estate described in a general manner, shall be construed to include any such to which such description shall extend, as the case may be, which he

may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear.

As to decisions under the foregoing sections, I will mention but a few, viz.:

(1.) When a testator leaves stocks, bonds, and other securities, they should, on the demand of the residuary legatee, be distributed without conversion, if such can be done without prejudice. *Reed's Estate*, 1 Norris, 428.

(2.) The only investments that trustees could make, free from risk, were real or government securities, or under the direction of the court. *Hemphill's Appeal*, 6 Harris, 303; but see legislative authority to invest in municipal securities, *supra*.

(3.) Investments should not be made by a guardian in his own name, but as guardian. *Stanley's Appeal*, 8 Barr, 431.

(4.) Prior to the Act of 12th March, 1800, when power was given to executors to sell, and they renounced, administrators with the will annexed could not sell. *Moody v. Vandyke*, 4 Binney, 31.

(5.) Since the Act of 12th March, 1800, an administrator with the will annexed has the same power as had the executor named. *Gideon's Estate*, 2 Weekly Notes of Cases, 355; *Meredith's Estate*, 1 Parsons, 433.

(6.) When executors exceed their powers, their act will be void only as to the excess. *Begg's Estate*, 23 Pittsburgh Law Journal, 85.

(7.) A will is defined to be the legal declaration of a man's intentions, which he wills to be performed after his death. *Frew v. Clarke*, 30 P. F. Smith, 170.

(8.) A will written and signed with a lead-pencil is valid. *Myers v. Vanderbelt*, 3 Norris, 510.

(9.) The legality of the execution of a will is to be determined by the requirements of the law as it was at the

time of its execution. *Taylor v. Mitchell*, 7 P. F. Smith, 209.

(10.) An infant or an idiot cannot make a valid will. *West v. West*, 10 Sergeant & Rawle, 445.

(11.) Imbecility of intellect, though short of insanity, may render a person incapable of making a will. *McTaggart v. Thompson*, 2 Harris, 149.

(12.) Though the marriage of a single woman invalidates her will, she may, after marriage, republish it. *Kurtz v. Saylor*, 8 Harris, 205.

(13.) Under the Act of 11th April, 1848, the will of a married woman must be executed in the presence of two witnesses, neither of whom to be her husband. *Dickinson v. Dickinson*, 11 P. F. Smith, 401.

(14.) Prior to the Act of 15th April, 1869, Pamphlet Laws, 30, the will of a married woman was invalid if the witnesses were devisees under it. *Camp v. Stark*, 33 Legal Intelligencer, 248 ; 32 P. F. Smith, 235.

(15.) Prior to the Act of 22d April, 1856, the probate of a will was conclusive as to personalty only. It is since conclusive as to realty, unless contested within five years. *Wilson v. Gaston*, 11 Norris, 207.

(16.) Wills of real estate must be executed and proved according to the law of the place where the same is situate ; of personal estate, according to the law of the country in which the testator is domiciled at the time of his death. *Flanery's Will*, 12 Harris, 502 ; *Carey's Appeal*, 25 P. F. Smith, 201.

(17.) A codicil is a written alteration of a will, or addition to it, executed in the manner required by law for wills. *Neff's Appeal*, 12 Wright, 501.

(18.) Though the will of a single woman becomes invalid as a will by her subsequent marriage, circumstances may authorize a court of equity to regard it as an ante-

nuptial settlement. *Lant's Appeal*, 9 Weekly Notes of Cases, 201.

(19.) If a man make a will, and marry, and die, leaving a widow, and children not provided for in the will, his will is revoked as to them. *Edwards's Appeal*, 11 Wright, 144.

(20.) The law is that a devisee shall have only the interest which the testator had when he made his will, which continues the same to his death. *McTaggart v. Thompson*, 2 Harris, 149; *Balliet's Appeal*, *Ibid.*, 451.

For other decisions, see *Rhone's Orphans' Court Practice*, titles Investments, Devises, Wills, etc.

In making wills testators should endeavor to avoid the dangers incidental to the operations of the Rule in *Shelley's Case*, which, not technically speaking, was, that where land was passed to Jones for life, remainder to Jones's heir or issue, Jones took all the estate the grantor had. Technically speaking, it was: "It is a rule of law that when the ancestor by any gift, or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs, in fee or in tail, that always in such cases the heirs are words of limitation of the estate, and not rules of purchase." The reason of this rule was that, under the feudal system, the tenant in possession owed certain duties to the lord, and could not, by a will creating a new estate, deprive the lord of these. In fact, when an estate is willed to the heir who was entitled to it by the law of descent, it goes to the heir by descent, and not by virtue of the will; and, though the fruits accruing to the lord by the feudal system have ceased to exist by the obliteration of tenure in chivalry, in the time of Charles II., yet the Rule exists in Pennsylvania with the only good results of making an arbitrary rule for the construction of wills by technical words, and, moreover, the more

easy transmission of real estate by defeating the intention of encumbering the same with life estates. In many of the States the Rule has been repealed as to devises, and it might be well if the same were done in Pennsylvania. Under the Rule there is great uncertainty as to the meaning of the words "issue," "heirs," and even of "children," in a devise. In the case of *Scott v. Wistar*, 13 Weekly Notes of Cases, 295, Wistar, Sr., made a will leaving a life estate to his daughters in certain real estate, and at their death, the same to pass to the male issue of his son Richard. Richard, Jr., died, leaving two sons and three daughters, one of whom was married to a man named Scott, by whom she had male issue. On the death of the daughters of Wistar, Sr., the two sons of Richard, Jr., entered into possession of the real estate, in which their aunts had a life interest. In the course of time the sons of Scott claimed an interest with their uncles as male issue of their grandfather, Richard, Jr., and the court decided in their favor. It is extremely doubtful that such was the intention of the testator, but the case shows the necessity of explicitness in a will, and the danger to be apprehended from the word "issue," or "children," or "heirs." As a general rule, wills are drawn up by an ignorant testator or by an equally ignorant conveyancer, and it is really surprising that more contests on the subject do not arise.

In regard to the word Issue, see "The Word Issue," by E. A. Anderson, and in regard to devises to classes, see "Remainders to Children as a Class," by Walter Murphy. As to the Rule in Shelley's Case, in Pennsylvania, see "The Rule in Shelley's Case," by Joseph P. Gross, and Husbands on "Married Women."

When an estate is acquired by several minors in common, it becomes a subject of partition. The laws regu-

lating this are numerous, and of these but a synopsis will be given.

Partition.

The right to a compulsory partition of lands was first introduced into the province of Pennsylvania by the adoption of the statutes of 31 Henry VIII., c. 1, Roberts's Digest, 217, and of 32 Henry VIII., c. 32, Ibid., 224, and is now regulated as to the partition of a decedent's estate amongst his heirs by the following acts, viz. :

(1.) Act of 29th March, 1832, Pamphlet Laws, 190, sections 36 to 45, inclusive.

(2.) Act of 24th February, 1834, Pamphlet Laws, 73, sections 41, 42, 44, and 45.

(3.) Act of 14th April, 1835, Pamphlet Laws, 275, section 2.

(4.) Act of 13th April, 1840, Pamphlet Laws, 319, sections 2, 3, and 4.

(5.) Act of 6th April, 1844, Pamphlet Laws, 214, section 1.

(6.) Act of 15th April, 1845, Pamphlet Laws, 458, section 1.

(7.) Act of 21st April, 1846, Pamphlet Laws, 426, section 1.

(8.) Act of 13th March, 1847, Pamphlet Laws, 319, section 1.

(9.) Act of 9th April, 1849, Pamphlet Laws, 527, section 16.

(10.) Act of 10th April, 1849, Pamphlet Laws, 596, section 10.

(11.) Act of 25th April, 1850, Pamphlet Laws, 569, sections 2, 5, and 10.

(12.) Act of 20th February, 1854, Pamphlet Laws, 89, section 1.

(13.) Act of 12th April, 1855, Pamphlet Laws, 214, section 1.

(14.) Act of 27th April, 1855, Pamphlet Laws, 369, section 4.

(15.) Act of 17th April, 1856, Pamphlet Laws, 386, section 1.

(16.) Act of 22d April, 1856, Pamphlet Laws, 534, section 10.

(17.) Act of 11th April, 1863, Pamphlet Laws, 341, section 1.

(18.) Act of 27th April, 1864, Pamphlet Laws, 641, section 1.

(19.) Act of 27th March, 1865, Pamphlet Laws, 44, section 1.

(20.) Act of 13th February, 1867, Pamphlet Laws, 160, section 1.

(21.) Act of 20th February, 1867, Pamphlet Laws, 30, section 1.

(22.) Act of 28th April, 1868, Pamphlet Laws, 105, section 1.

(23.) Act of 26th February, 1869, Pamphlet Laws, 4, section 1.

(24.) Act of 30th March, 1869, Pamphlet Laws, 15, section 1.

(25.) Act of 26th February, 1870, Pamphlet Laws, 256, section 1.

(26.) Act of 23d May, 1871, Pamphlet Laws, 274, sections 1, 2, and 3.

(27.) Act of 24th May, 1871, Pamphlet Laws, 1088, section 1.

(28.) Act of 14th May, 1874, Pamphlet Laws, 156, sections 1, 2, and 3.

(29.) Act of 8th May, 1876, Pamphlet Laws, 134, sections 1, 2, 3.

(30.) Act of 8th May, 1876, Pamphlet Laws, 140, section 1.

(31.) Act of 13th May, 1876, Pamphlet Laws, 172, section 1.

(32.) Act of 1st May, 1879, Pamphlet Laws, 40, section 1.

Synopsis of the Foregoing Sections.

(1.) The 36th section of the Act of 29th March, 1832, Pamphlet Laws, 190, authorizes the Orphans' Court, on application, to appoint seven or more persons to make partition of the estate of a decedent, and provides that, in case of their inability to agree, the Court may award an inquest to make the partition.

The 37th section of the same act provides for cases in which the real estate of the decedent cannot be divided in partition without prejudicing the whole. Under this section the seven or more persons, or the inquest, make a just appraisement of the real estate, and then the Orphans' Court offer it at the appraised price: 1st. To the eldest son, if living, and, if dead, to his children in the order of birth, preferring males to females. Such offer being refused, then, 2d. To the second son, or, if deceased, to his children in like manner, and so on through the male children. If all the males, as aforesaid, refuse, then it is offered to the females in like order, beginning with the eldest. Whoever accepts must pay to the other children their proportionate parts within a reasonable time, giving them security by recognizance.

The 38th section provides that, where the division cannot be made as aforesaid, the estate may be divided into purparts, as nearly equal in value as possible, and the court may offer such to the children as provided by the 37th section, one or more of the purparts to be made subject to the payment of enough money to equalize the portions.

The 39th section provides for cases where the estate cannot be divided into as many shares as there are heirs.

The 40th section provides that in all such cases of appraisement the Orphans' Court may grant a rule on the heirs to accept or refuse their shares.

The 41st section provides that the purpart of the widow shall not be paid to her, but shall remain a charge on the premises if the whole be taken by one child, and the interest on the same shall be paid by such child to the widow.

The 42d section provides that, when all the heirs refuse to take as aforesaid, the court may direct the executor or administrator to make sale of the real estate.

The 43d section provides that, in case of a sale as provided by the 42d section, the Orphans' Court shall direct that the share of the widow shall remain with the purchaser, who will pay the interest thereon, and, at the death of the widow, the share shall be paid to the persons legally entitled thereto.

The 44th section provides for partition when the land lies in different counties.

The 45th section provides that, where one of the heirs has elected to take the real estate in one county, he shall not have the preference in regard to the land in another county until the other heirs have refused to take the same.

(2.) The 41st section of the Act of 24th February, 1834, Pamphlet Laws, 73, relates to distribution by an administrator, and provides that, if the distributee cannot give security for the refunding a ratable sum in case debts against the decedent's estate shall appear, the money coming to such distributee shall be put out at interest, and the interest thereon paid annually to the distributee.

The 42d section of the same act provides that, when

the real estate of a decedent is sold by an executor or administrator in partition, the same shall not be liable in the hands of the purchaser to the debts of the decedent, provided the sale has been made after the expiration of two years from the granting of letters testamentary or of administration.

The 44th section of the same act provides that, whenever real estate is ordered to be sold in partition, and the executor or administrator fails to execute the order, the Orphans' Court may appoint a person in lieu of such to perform their duty.

The 45th section of the same act provides that, before the distribution of the proceeds of such sale shall be made, security shall be given by the recipients to refund sufficient to pay any debt that may in future appear against the decedent's estate.

(3.) The 3d section of the Act of 14th April, 1835, Pamphlet Laws, 275, provides that, in the proceedings in partition and valuation, the parties in interest shall be named when known; but, if not known, notice shall be given by publication.

(4.) The 2d section of the Act of 13th April, 1840, Pamphlet Laws, 319, provides that minors, residing out of the State, may, by permission of the Orphans' Court, receive such part of the devise, legacy, or share coming to them as may suffice for their education and maintenance.

The 3d section of the same act confirmed certain proceedings in partition theretofore had.

The 4th section of the same act extended the jurisdiction of the Orphans' Court in partition to cases of testacy, when the heirs or any of them are minors, or when the course of descent is not altered by the decedent's will.

(5.) The 1st section of the Act of 6th April, 1844,

Pamphlet Laws, 214, provides that, in cases of partition where the Orphans' Court shall have decreed shares to heirs not residing in the State, with the payment of owelty annexed, the court may order a rule requiring the payment of the owelty.

(6.) The 1st section of the Act of 15th April, 1845, Pamphlet Laws, 458, provides that, when, on proceedings in partition, such is made by an inquest appointed by the Orphans' Court, on the refusal of the heirs to accept, the court shall make a decree requiring the executor or administrator to make sale of such unaccepted property.

(7.) The 1st section of the Act of 21st April, 1846, Pamphlet Laws, 426, provides that nothing contained in the Act of 29th March, 1832, shall be construed to give to the Orphans' Court exclusive jurisdiction in the partition and valuation of the real estate of intestates, or to prevent the parties interested from proceeding by action of partition in other courts of the commonwealth having jurisdiction in the said action of partition.

(8.) The 1st section of the Act of 13th March, 1847, Pamphlet Laws, 319, provides that the jurisdiction of the Orphans' Court in the partition and valuation of real estate shall extend to any undivided interest in fee simple in land of which the party died seized as tenant in common or joint tenant as fully as if decedent had been solely seized, and the inquest, or seven men appointed to divide, shall value and return such interest undivided, etc.

(9.) The 16th section of the Act of 9th April, 1849, Pamphlet Laws, 527, provides that, in all cases of *bona-fide* sales under order of the Orphans' Court, the title of the purchaser shall not be affected by the revocation of the letters testamentary or of administration of the executor or administrator, and said purchaser shall have a right to proceed to obtain possession in the manner pro-

vided in relation to purchases at sheriffs' sales (viz., under Act of 16th June, 1836, Pamphlet Laws, 761 ; see Jackson & Gross, page 302).

(10.) The 10th section of the Act of 10th April, 1849, Pamphlet Laws, 596, provides that the jurisdiction of the Orphans' Court in the partition and valuation of the real estate of decedents, shall extend to all cases of testacy wherein the whole or any part of the real estate may be devised to two or more children to be held in unequal proportions, etc.

(11.) The 2d section of the Act of 25th April, 1850, Pamphlet Laws, 569, provides that, in all cases of partition in the Orphans' Court, it shall be lawful for the court to grant a rule to the parties, instead of the separate rules, as theretofore.

The 5th section of the same act provided that the provisions of the 3d section of the Act of 13th April, 1840, as declared by the 1st section of the Act of 25th April, 1850, shall extend to all cases which have or shall arise (It is evident that the word 1st in this section should be 4th, as the 1st section relates to the Act of 29th March, 1832.)

The 10th section of the same act provides that, in all cases of partition, the courts having jurisdiction thereof are empowered, wherever advisable, to cause the share of the parties appearing to be allotted to them, and to permit the residue to remain to the parties entitled thereto for future partition.

(12.) The 1st section of the Act of 20th February, 1854, Pamphlet Laws, 89, provides that courts not having jurisdiction in partition shall have power to entertain proceedings for the partition of real estate or the recovery of dower, though the lands lie in different counties : *Provided*, That such proceedings shall be brought in the county wherein the decedent had his domicil, etc.

(13.) The 1st section of the Act of 12th April, 1855, Pamphlet Laws, 214, provides that, in cases of partition in the Orphans' Court, when the court decrees any party, taking in the appraisement, to give a recognizance for the payment of the valuation, it shall be the duty of the clerk of the court, when there be no auditor, to make a calculation exhibiting the amounts due the respective parties, and to record the same.

(14.) The 4th section of the Act of 27th April, 1855, Pamphlet Laws, 369, provides that, in any proceeding for the partition of real estate, the court may appoint, on the agreement of the parties, three or more commissioners to divide or value the same, with the same effect as a sheriff's inquest, etc.

(15.) The 1st section of the Act of 17th April, 1856, Pamphlet Laws, 386, provides that the intent of the Act of 20th February, 1854, shall be to include proceedings in partition instituted in the Orphans' Court of any county of the Commonwealth when the real estate is situate in two or more counties.

(16.) The 10th section of the Act of 22d April, 1856, Pamphlet Laws, 533, provides that, in all cases of partition of real estate, wherein a valuation has been made of the whole or parts, the same shall be allotted to the party who shall offer the highest price above the valuation returned.

(17.) The 1st section of the Act of 11th April, 1863, Pamphlet Laws, 341, provides that, upon the sale of any real estate in partition in the Orphans' Court, the administrator or trustee shall file in the register's office an account of his trusteeship.

(18.) The 1st section of the Act of 27th April, 1864, Pamphlet Laws, 641, provides that the costs, in cases of partition and counsel fees, shall be paid by the parties in proportion to their interests.

(19.) The 1st section of the Act of 27th March, 1865, Pamphlet Laws, 45, extended the provisions of the 19th section of the Act of 24th February, 1834, *supra*, to all sales of decedents' estates made by order of the Orphans' Court in partition, the proceeds of the sales to be paid into court.

(20.) The 1st section of the Act of 13th February, 1867, Pamphlet Laws, 160, provides that the Orphans' Courts of York and Fayette counties shall have power in cases of testacy, on the petition of the widow, to appoint three commissioners or an inquest to make partition or valuation of the widow's dower.

(21.) The 1st section of the Act of 20th February, 1867, Pamphlet Laws, 30, confers on the committees of lunatics or habitual drunkards the power to prosecute actions of partition.

(22.) The 1st section of the Act of 28th April, 1868, Pamphlet Laws, 105, provides that so much of the Act of 27th March, 1865, *supra*, as required the money arising from the sales to be paid into court shall be modified so that the court, at its discretion, may make such order as may be just.

(23.) The 1st section of the Act of 26th February, 1869, Pamphlet Laws, 4, provides that partitions made in the Orphans' Court prior to the passage of the Act of 13th March, 1847, and sales within the purview of said act shall be confirmed, and that thenceforth several undivided interests in any premises, derived from different ancestors, shall be parted in one proceeding in the Orphans' Court.

(24.) By the 1st section of the Act of 30th March, 1869, Pamphlet Laws, 15, the meaning of the Acts of 20th February, 1854, *supra*, and 17th April, 1856, *supra*, is declared to be to include all proceedings in partition necessary to be had, as well before as after

the refusal of the heirs to take real estate at the valuation, and the courts may authorize the sale of such real estate after the refusal in the same manner as if all the real estate were situated in the county in which the proceedings were instituted.

(25.) The 1st section of the Act of 26th February, 1870, Pamphlet Laws, 256, provides that, in the case of partition of real estate in the county of Luzerne, where the land contains coal or other mineral, partition may be made of the surface land, reserving the minerals for future partition, etc.

(26.) The 1st section of the Act of 23d May, 1871, Pamphlet Laws, 274, provides that, in cases of sales of real estate in partition, the Orphans' Court may decree the payment of the cost of the proceedings on the confirmation of the sale, and the purchasers shall give security for the payment of the balance to the parties entitled thereto, by recognizance.

The 2d section of the said act provides that, before suit be entered on said recognizance, security shall be given by the party entitled, conditioned for a ratable refunding, to pay any debt that may appear against the decedent; if the party be unable to give the security then the money derived from the sale shall be put at interest, as provided by 41st section of Act of 24th February, 1834, *supra*.

The 3d section of the same act provides that the recognizance shall be a lien on the real estate sold, until the amount is paid.

(27.) The 1st section of the Act of 24th May, 1871, Pamphlet Laws, 1088, provides that the provisions of the Act of 26th February, 1870, *supra*, shall not be construed to diminish or impair the rights of widow, husband, or surviving parent.

(28.) The 1st section of the Act of 14th May, 1874,

Pamphlet Laws, 156, provides that the meaning of the Acts of 20th February, 1854, and of 30th March, 1869, *supra*, shall comprehend all suits in partition, whether in the Common Pleas or Orphans' Court, by any tenant in common or joint tenant, and writs of partition may be issued to an inquest of seven men, or to a commission of three.

The 2d section provides that nothing contained in the act, nor in the Acts of 20th February, 1854, and of 30th March, 1869, *supra*, shall be so construed as to prevent any tenant in common or joint tenant of real estate situate in two or more counties from bringing a separate suit in either of said counties for the partition of so much of the real estate lying therein except where such consists of single tracts lying in adjoining counties.

The 3d section provides that partition may be made of lands and coal-rights therein and timber-rights thereon, whether the rights of all parties be co-extensive with the whole or not, and whether the rights of some only extend to the land and part of the coal or only to the land and part of the timber.

(29.) The 1st section of the Act of 8th May, 1876, Pamphlet Laws, 134, provides, that whenever a bill be filed in any court having equity jurisdiction in partition, the court, after decree in partition made, may refer the cause to a master to partition the land, value the same, and ascertain the owelty, etc.

The 2d section makes it the duty of the court to examine the report of the master, with power to correct or set aside the same and direct a new partition, and to direct conveyances to be made.

The 3d section provides, that the decree confirming a partition as aforesaid shall have the same effect as a judgment that the partition remain firm and stable, etc.

(30.) The 1st section of the Act of 8th May, 1876,

Pamphlet Laws, 140, provides, that in all cases in the Orphans' Court in which real estate shall be taken by an heir, or other person legally authorized, charged with owelty, the said court shall have power to fix, for the payment of such, such time or times as in the judgment of the court shall be to the advantage of those entitled: *Provided*, That the principal and interest be secured.

(31.) The 1st section of the Act of 13th May, 1876, Pamphlet Laws, 172, provides, that, in all cases in which there have been proceedings in the Orphans' Court for the partition of real estate between one or more living cotenants in common, and the heirs, devisees or legal representatives of a decedent who was a cotenant or tenant in common with said living parties, and the division has been carried out by allotment or by sale under the decree of court, the proceedings shall be as valid and effectual as if the Orphans' Court had had full jurisdiction of the same: *Provided*, That the parties in interest have had the same notice required to be given in such cases where the court has jurisdiction.

(32.) The 1st section of the Act of 1st May, 1879, Pamphlet Laws, 40, provides that thereafter, in all proceedings in the partition of real estate, when an inquisition shall be held by the sheriff, the same shall consist of six persons instead of twelve, as theretofore.

A few Decisions on Partition.

(1.) The Orphans' Court has no jurisdiction to make partition, unless it be given by some act of Assembly Snyder's Appeal, 12 Casey, 166.

(2.) Since the Act of 13th April, 1840, the Orphans' Court has jurisdiction in cases of testacy when the course of descent is not changed, or when some of the parties are minors. Waln's Appeal, 4 Barr, 502.

(3.) Since the Act of 13th March, 1847, the Orphans' Court has jurisdiction to decree partition of land held by the decedent in common with another. *Shaffer v. Shaffer*, 14 Wright, 396.

(4.) Since the Act of 10th April, 1849, the Orphans' Court has jurisdiction to make partition when a child was born subsequent to the date of the will. *Cowan's Appeal*, 24 P. F. Smith, 329.

(5.) Since the Act of 22d April, 1856, preference is not given to one heir over another, as the purparts are allotted to the heir who makes the highest bid; but if no one bids, the old rule prevails. *Klohs v. Reifsnyder*, 11 P. F. Smith, 240.

(6.) Each heir is entitled to but one bid, which should be sealed, and all bids should be in before any are opened. *Ibid.*

(7.) Since the Act of 20th February, 1867, Pamphlet Laws, 30, the committee of a lunatic may maintain an action of partition. *Ibid.*

(8.) An amicable partition, if fair and equal, will bind minors. *Cowan's Appeal*, 24 P. F. Smith, 329.

(9.) None but the infant, on attaining full age, can take advantage of a partition that is voidable as to him. *Burke v. Young*, 2 Sergeant & Rawle, 383.

(10.) A testator may direct the time and manner of making partition of lands devised by him. *Naglee's Estate*, 2 P. F. Smith, 154.

For further decisions, see title "Partition," in "Rhone's Orphans' Court Practice."

As to the Mortgaging or Sale of a Minor's Real Estate.

In regard to the mortgaging or sale of a minor's real estate where sale is made for purposes other than partition, the same has been referred to, *supra*, pages 51 to 54.

Under the 31st section of the Act of 29th March, 1832, Pamphlet Laws, 198, the Orphans' Court may authorize a sale or mortgage of a decedent's real estate by the executor or administrator in the following cases :

"1. On the application of the executor or administrator, setting forth that the personal estate of the decedent is insufficient for the payment of debts and maintenance and education of his minor children, or for the purpose of paying the debts alone.

"2. On the application of such executor or administrator, or of any person interested, setting forth that, on the final settlement of the administration account, it appears that there are not sufficient personal assets to pay the balance appearing to be due from the estate of such decedent, either to the accountant or others."

The text of the clause in the same section, authorizing the mortgage or sale on the application of a guardian, is given *supra*, page 51, and the object to be attained by such is to obtain means for the education and maintenance of the minors, or for the improvement or repair of their real estate, or that, in the judgment of the court, it would be to the interest of the minors that the real estate should be sold.

The 32d section of the Act of 1832, *supra*, page 51, makes provision for the sale or mortgaging of the real estate where the land lies in the same county or in a county other than that in which the decedent was resident.

The 33d and 34th sections of the act, *supra*, page 52, provide that authority to mortgage or sell the real estate shall not be given, until the executor, administrator, or guardian shall have rendered to the Orphans' Court an inventory and appraisement of the personal property, and a statement of the real estate, etc.

The 54th section, *supra*, page 52, gives instructions as to the notice to be given of the sale.

The 20th section of the Act of 24th April, 1834, Pamphlet Laws, 76, requires executors and administrators, where it appears that the personal estate of a decedent is insufficient to pay his debts, to proceed under the direction of the Orphans' Court to sell a sufficiency of the real estate, and such real estate shall not be liable in the hands of the purchaser for the debts of the decedent.

The 43d section of the act provides for the security to be given by such executor or administrator, prior to executing any order or decree of the Orphans' Court in regard to sales of the real estate of the decedent.

The 19th section of the act provides for the payment into court of the proceeds of any sale. This section is affected by the provisions of Acts of 27th March, 1865, and 28th April, 1868, *supra*, page 117.

When the land of an intestate decedent has been sold for the payment of his debts, the residue of the proceeds thereof shall, under the 18th section of the Act of 8th April, 1833, Pamphlet Laws, 320, descend to the persons entitled to the real estate under the act.

The other acts on the subject are as follows:

(1.) Act of 16th June, 1836, Pamphlet Laws, 792, section 19.

(2.) Act of 20th April, 1846, Pamphlet Laws, 411, sections 1, 2, 3.

(3.) Act of 16th March, 1847, Pamphlet Laws, 474, section 2.

(4.) Act of 9th April, 1849, Pamphlet Laws, 527, section 16.

(5.) Act of 3d April, 1851, Pamphlet Laws, 305, sections 1, 2, 3, 4, 5.

(6.) Act of 18th April, 1853, Pamphlet Laws, 503, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

(7.) Act of 13th April, 1854, Pamphlet Laws, 368, sections 1, 3.

(8.) Act of 27th April, 1855, Pamphlet Laws, 369, section 5.

(9.) Act of 22d March, 1859, Pamphlet Laws, 207, section 1.

(10.) Act of 1st May, 1861, Pamphlet Laws, 431, section 1.

(11.) Act of 18th April, 1864, Pamphlet Laws, 462, section 1.

(12.) Act of 23d March, 1867, Pamphlet Laws, 43, sections 1, 2.

(13.) Act of 18th March, 1869, Pamphlet Laws, 409, section 1.

(14.) Act of 14th May, 1874, Pamphlet Laws, 166, section 1.

(15.) Act of 8th June, 1874, Pamphlet Laws, 277, section 1.

(16.) Act of 28th April, 1876, Pamphlet Laws, 50, section 1.

(17.) Act of 4th June, 1883, Pamphlet Laws, 65, section 1.

Of the foregoing acts we will give but a synopsis as follows:

(1.) The 19th section of the Act of 16th June, 1836, Pamphlet Laws, 792, provides that the jurisdiction of the Orphans' Court shall extend :

1st. To the appointment, control, removal, and discharge of guardians, and the settlement of their accounts.

2d. To the removal and discharge of executors and administrators, deriving their authority from the register.

3d. To the distribution of the assets of decedents.

4th. To the sale of the real estate of decedents.

5th. To the partition of the real estate of intestates amongst the heirs.

6th. To enforce the specific execution of contracts made by decedents in regard to the sale and conveyance of real estate.

7th. To proceedings for the recovery of legacies.

8th. To cases, within their respective counties, wherein executors, administrators, guardians or trustees may be possessed of or be accountable for any real or personal estate of a decedent.

[NOTE.—The 4th section of the Act of 13th April, 1840, Pamphlet Laws, 319, extended the power of the Orphans' Court to partition in cases of testacy, where any of the parties are minors, or where the course of descent is not changed, but it did not extend the power to cases of mortgaging or selling real estate.]

(2.) The 1st section of the Act of 20th April, 1846, Pamphlet Laws, 411, provides that, whenever the purchaser of real estate, at Orphans' Court or sheriff's sale, shall be entitled, as a lien creditor, to receive the proceeds of the sale, it shall be the duty of the person making the sale to receive the receipt of such person for the amount which he would appear to be entitled to receive: *Provided*, That the legal costs of the sale shall first be paid, and that the creditor exhibits a certified statement of the fact that he is a lien creditor, etc.

The 2d section of the same act provides that it shall be the duty of the sheriff, executor, or administrator, etc., making the sale, to state the fact of the taking of the receipt, as aforesaid, in the return of the proceedings of the sale, and to also attach a list of the liens on the property sold, which return shall be read in court, and, if the right of the purchaser to the amount mentioned shall be questioned by any person interested, the court shall appoint an auditor, who, after notice, shall make a report, dis-

tributing the proceeds of the sale, etc., to be approved by the court, or to direct an issue to determine the validity of the claim. If it be determined that the purchaser was not entitled to receive said money, the court shall set aside the sale, and order the real estate to be re-sold, unless the money be paid to the person making the sale within ten days thereafter: *Provided*, That nothing in the act shall prevent the purchaser, in case the real estate on the subsequent sale brings less than his bid, from being liable for the deficiency: *and provided*, that, before an issue shall be directed upon the distribution of the money, the applicant for such issue shall make affidavit that there are material facts in dispute therein, etc., upon which affidavit the court shall determine whether such issue shall be granted, etc.

The 3d section provides that, upon granting the issue, the court may at discretion, when the money has been paid, upon the application of the party on the record, order the same to be invested in some sufficient security *pendente lite*.

(3.) The 2d section of the Act of 16th March, 1847, Pamphlet Laws, 474, provides that the Orphans' Court of any city or county, in which vacant land of a minor be situated, may, on the application of a guardian, setting forth that it is unproductive and expensive, and that it would be to the benefit of the minor to let it on ground-rent, authorize the guardian to let the same, and execute the proper conveyances.

(4.) The 16th section of the Act of 9th April, 1849, Pamphlet Laws, 527, provides that, in cases of *bona fide* sales under order of the Orphans' Court, the title of the purchaser shall not be affected by the revocation of the letters testamentary or of administration of the executor or administrator, and also that purchasers shall have the right to obtain possession of the purchased premises in

the manner then provided in relation to purchasers at sheriff's sales. See Jackson & Gross, 318.

(5.) The 1st section of the Act of 3d April, 1851, Pamphlet Laws, 305, provides that the Orphans' Court shall have authority to authorize the sale of real estate as follows, in addition to the cases specified in the acts to which the act is supplementary :

I. Where lands and tenements, or any interest in possession, belong to a minor, and it appears to the Orphans' Court that it would be to the interest of the minor that such should be sold, on the application of the guardian, the court shall authorize him to make sale, and, on the confirmation of the sale, the guardian shall receive the proceeds as the estate of the minor.

II. Where lands are held by will or otherwise for life, or *pur autre vie*, by any person, with remainder to any minor, and it shall appear to the Orphans' Court that it would be to the interest of such minors that the same should be sold, in such cases, upon the application of the tenants for life, or *pur autre vie*, the court shall order a trustee to make sale of the land, and, on confirmation of such, the trustee shall receive and hold the proceeds in trust for the parties in interest, and shall loan the same upon good real estate security, upon bond and mortgage, and shall pay the interest on the same to the tenants for life, or *pur autre vie*, until the life estates shall terminate, and then the principal to the person entitled in remainder.

III. Where lands are held in trust, under the provisions of a will, for a corporation or person, and it appear to the Orphans' Court that it be to the interest of the *cestui que trust* that the same should be sold, upon the application of the trustee, the court shall authorize the trustee to make sale, etc.

The 2d section of the same act provides that, where ap-

plication be made to the Orphans' Court for a decree authorizing the sale of real estate under the provisions of the act, the court shall appoint a day for the hearing and cause notice thereof to be given to parties interested in the real estate, and to the guardians of those who are minors, etc., at least thirty days prior to the hearing, when the court shall make such decree as facts shall require.

The 3d section provides that the notice shall be given in the manner prescribed by the 52d and 53d sections of the Act of 29th March, 1832, Pamphlet Laws, 190.

The 4th section provides that every application for the sale of lands under the act shall be in the form of a petition, and shall set forth a description of the lands, and the names of the parties in interest, and when any of such be minors, having no guardian residing within the county in which the lands lie, the court shall appoint a person to guard their interests: *Provided*, That, if such minors appear on the day of hearing by guardian or next friend, the appointment by the court shall be void. See *supra*, page 30, for text.

The 5th section provides that, before the confirmation of the sale, the persons applying for the sale shall give a bond of security. See *supra*, page 61, for text.

(6.) The 1st section of the Act of 18th April, 1853, Pamphlet Laws, 503, provides that, in all cases where real estate shall have been acquired by descent or last will, the Orphans' Court, and in all other cases the Court of Common Pleas, shall have jurisdiction to decree the sale, mortgaging, leasing, or conveyance on ground-rent of real estate, as in the act set forth: *Provided*, That any such court shall believe such to be to the interest of those in interest: *and provided*, such can be done without the violation of any law, which may confer an exemption from sale or alienation.

The 2d section of the same act provides when such sale, mortgaging, leasing, or conveyance on ground-rent may be decreed as follows :

I. Whenever real estate shall be held or owned by minors, lunatics, or habitual drunkards, so found by inquisition.

II. For the sole and separate use of married women.

III. For religious, beneficial, or charitable societies or associations, incorporated or unincorporated.

IV. Or by trustee for any public or private use or trust, though therein there may exist a power of sale, but the time not arrived to exercise such, etc.

V. Where there has been a defective appointment in any will, etc.

VI. Where the owner of real estate has been absent, and unheard of for seven years.

VII. Where a husband has a wife who is either a lunatic or a minor.

VIII. Whenever a married woman owns real estate, and her husband has abandoned her for two years, or has been absent or unheard from for seven.

IX. When a decedent had contracted by parol to sell real estate, and those in interest do not plead the statute, requiring such contracts to be in writing.

X. Whenever a decedent's real estate is subject to debts not of record.

XI. Whenever real estate shall be entailed or contingent remainders or executory devises limited thereon.

XII. Whenever in proceedings in partition in equity, it appears that real estate cannot be divided without prejudice to the owners.

XIII. Whenever real estate be purchased or ground-rent reserved and be held by one in a fiduciary capacity.

XIV. Such decree may be made, whether the interest be in severalty, joint-tenancy, coparcenary or common.

XV. Generally, in cases where estates be devised or granted in trust for limited purposes, or where a party in interest is under some legal disability, and every power to sell real estate shall confer authority to sell and convey reserving rent, and the same to extinguish or convey.

The 3d section provides that such sale, mortgaging, leasing or conveyance upon ground-rent may be decreed on petition of any trustee, guardian, or person interested, setting forth the facts under oath or affirmation. If all parties do not voluntarily appear, the court shall set a day to appear and cause a citation to be served, and public notice given, as in the section is directed, and, if the parties fail to appear, the court may proceed to make a decree: *Provided*, that, in the case of the appointment of a guardian by the court, security shall be taken of him. See *supra*, page 61, for text.

The 4th section provides that such sales, mortgages, etc., shall only take place after careful investigation, etc. See *supra*, page 62, for text.

The 5th section provides that the title of the purchasers at such sales, etc., shall be a fee simple one, indefeasible by any person in interest, and unprejudiced by errors in the proceedings of the court, and such sales shall discharge all liens on the premises sold, and shall bar any estate tail, and defeat contingent remainders, and shall bar any right of the Commonwealth to forfeit real estate held by any corporation beyond the amount authorized, if no proceedings to that effect had been commenced: *Provided*, that the petition shall set forth an explanation of title and of the purpose to bar the entail, defeat the contingent remainder or the right of the Commonwealth: *and provided*, that the purchase-money or rent reserved be a lien on the premises sold or let until fully paid.

The 6th section provides that the purchase or mortgage-money or rent shall be substituted for the real estate sold, as regards the enjoyment or ownership, after the payment of liens, and shall be applied for the benefit of the same persons and for the same estate as the premises had been held, except only such remainders after an entailment or contingent remainder as shall be barred or defeated, and those entitled to a present interest shall receive the interest of the proceeds or rents, unless expressly directed to accumulate : *Provided*, that no principal moneys, raised by sale or mortgage, shall be expended for any other purpose than for the payment of liens upon or the improvement of the same real estate when mortgaged, or other real estate, when held for the same uses and persons, unless the same be required for the maintenance or education of parties having the like interests, vested or expectant, and can be thus equitably so applied, and without diminution of the capital that may of right become the property of parties having unbarred interests in remainder, or by executory devise. It shall be the duty of the court to decree the application of the purchase or mortgage-money and rents, with the aid of an auditor, when necessary, to the discharge of liens, etc., and, before the decree be executed, the parties interested to execute the same shall give security, etc., and, such security having been given, no purchaser or lessee shall be bound to see to the application of the purchase-money or rents, or be affected by the former trusts, etc. See *supra*, page 63, for text.

The 7th section provides that it shall be lawful for trustees, guardians, committees, married women and corporations in the cases before said in the act, under the decree of court, as follows :

1st. To make and take conveyances to square and adjust lines, etc.

2d. To make and take conveyances to effect the partition of real estate, etc.

3d. To purchase other real estate when needful or useful to the business, etc.

4th. To purchase real estate, when necessary to protect any security or rent held on property exposed to judicial sale: *Provided*, that no corporation purchase beyond its charter license: *Provided*, that no purchase or sale under the act shall change the course of descent or transmission of property as respects persons who are not of competent ability to dispose of it.

Persons, intrusted with moneys raised under the act, to file their accounts in the court whence their authority is derived, whereby the same may be audited and confirmed; and the accountants discharged.

The 8th section provides that, in all cases under the act appeals may be taken to the Supreme Court from the Orphans' Court, as then provided by law in other cases, and in the Common Pleas as provided in equity cases: *Provided*, that, if any decree be carried into execution before the appeal be perfected, and written notice thereof given to any vendee, mortgagee or lessee, any reversal thereof shall not affect the right or title of such vendee, mortgagee or lessee, but the purchase or mortgage-money shall stand in lieu of the premises: *Provided*, that, before any decree be carried into effect, to afford such indemnity, twenty days be allowed from its entry to take effect and perfect such appeal.

The 9th section provides that no person shall, after the passing of the act, by any deed, will, or otherwise, settle or dispose of any real or personal property, so and in such manner that the rents, issues, interests or profits thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor, settler, or testator, and the term of twenty-one years from

the death of any such grantor, settler, or testator, etc.; and, in every case where any such accumulation shall be directed, the same to be null and void as to the excess, and the excess shall go to the parties entitled to them, had the direction not been given: *Provided*, that any donation, bequest or devise for any literary, scientific, charitable or religious purpose, shall not come within the prohibition of the section: *and provided*, that, notwithstanding any direction to accumulate rents, issues, interests, and profits for the benefit of any minor, it shall be lawful for the court, on the application of the guardian, when there shall be no other means for maintenance and education, to decree an adequate allowance for such purpose, etc. See *supra*, page 50.

The 10th section provides that the directions given in the 6th section of the act, in regard to security in cases of sales, etc., and the condition of the bond or security, shall apply to all cases of sales or mortgages by order of the courts of the Commonwealth: *and provided*, that no decree for the sale, mortgaging or letting of real estate, under the act, shall be made, except where the president-judge of the court or the law-judge be present, and acts of assembly relating to special courts where the president-judge is interested shall apply. See *supra*, page 63.

(7.) The 1st section of the Act of 13th April, 1854, Pamphlet Laws, 368, provides that, in sales of real estate under the Act of 1853, *supra*, when the trustees, guardians, etc., authorized to make sale, mortgage, or lease, reside out of the county in which is the real estate, the deed, mortgage or lease may be acknowledged before the Courts of Common Pleas or Orphans' Court of any county of the State, where the person may reside, and be certified under the seal of the court.

The 3d section of the same act provides that where a

sale, mortgage or lease has been made, without leave of the court, the court may ratify and confirm the sale.

(8.) The 5th section of the Act of 27th April, 1855, Pamphlet Laws, 369, provides that, under the Act of 1853, *supra*, whenever the estate has been derived partly by deed and partly by descent or will, either the Court of Common Pleas or the Orphans' Court may entertain jurisdiction of the proceedings to make sale or lease.

(9.) The 1st section of the Act of 22d March, 1859, Pamphlet Laws, 207, provides that, in sales of real estate under the order of the Orphans' Court, the court shall have power to direct the terms thereof for cash, not less than one-fourth the purchase-money at the confirmation of the sale, and the balance in such instalments and at such times as the court may think to the advantage of the parties in interest, requiring security in double the amount : *Provided*, the purchase-mouey shall be a lien on the premises.

(10.) The 1st section of the Act of 1st May, 1861, Pamphlet Laws, 431, provides that, where authority be given by decree of court to sell real estate, and any of the persons authorized shall have died, resigned, or ceased to act, before a sale be effected, sales may be effected and deed executed by the surviving or succeeding trustee, or other persons authorized, and the deed shall vest the property in the grantee as fully as otherwise.

(11.) The 1st section of the Act of 18th April, 1864, Pamphlet Laws, 462, provides that it shall be lawful for trustees, guardians, etc., in addition to the powers granted by the 7th section of the Act of 1853, *supra*, under the decree of the proper court, to make and take or to join with owners of other undivided interests in making and taking conveyances, by deed acknowledged in court, and without public sale, in order to change, in part or in whole, the route or location of any right of way or pas-

sage existing over and upon adjoining or other lands. See *supra*, page 64, for text.

(12.) The 1st section of the Act of 23d March, 1867, Pamphlet Laws, 43, provides that any deed to convey real estate under the Act of 1853, *supra*, being acknowledged in court, and certified as required by the act or its supplement, may be recorded in the recorder of deed's office, without other acknowledgment, and the security required by the act may be approved by a court of like jurisdiction of the county of which the grantor is a resident, and be certified under seal of such court, to that wherein the sale was decreed, and such certificate shall be copied on the record thereof.

The 2d section of the act provides that private sales, under the Act of 1853, shall discharge the premises from the lien of certain debts. See *supra*, page 65, for text.

(13.) The 1st section of the Act of 18th March, 1869, Pamphlet Laws, 409, provides that the Orphans' Court of Mercer County shall have power, on the application of the guardian of any minor owning minerals in the county, to lease the said lands, etc. See text of this section, *supra*, page 64, for text.

(14.) The 1st section of the Act of 14th May, 1874, Pamphlet Laws, 166, provides that, whenever any person shall die seized of real estate valued at not more than one thousand dollars, and the parties in interest desire the same to be converted into money for distribution, it shall be lawful for the Orphans' Court, on the joint petition of the widow and heirs and the guardians or committee of minors or persons under disability, in whom the real estate has vested, etc., to order the executor, administrator or trustee to sell and proceed in all respects in the manner then provided by law in cases of sale of real estate for

the payment of debts, and make distribution among those entitled thereto.

(15.) The 1st section of the Act of 8th June, 1874, Pamphlet Laws, 277, provides that whenever, under the provisions of the Act of 1853, *supra*, and the supplements thereto, the courts have power to decree a lease of lands for mining purposes, it shall be lawful for the said courts to decree that such lands may be so combined and consolidated with other adjoining lands, as to form one tract in which the several parties combining shall become seized of undivided interests proportionate to their divided interests, etc.

(16.) The 1st section of the Act of 28th April, 1876, Pamphlet Laws, 50, provides that, whenever, in pursuance of proceedings in the Orphans' Court or Court of Common Pleas, any person therein described as a trustee, guardian, etc., or as standing in any fiduciary relation to the parties interested, shall convey any real or personal estate, in which proceeding security shall have been entered by decree of court, no defect in the original appointment, or absence of proper qualification, shall affect the title of the grantee, or the security entered: *Provided*, that the act shall not apply to judicial proceedings commenced prior theretofore.

(17.) The 1st section of the Act of 4th June, 1883, Pamphlet Laws, 65, provides that, on the application to the Orphans' Court having jurisdiction of the accounts of any executor or administrator for leave to sell the real estate of a decedent, or any part of the same, for payment of debts, and any part of said real estate is situated partly in each of two or more counties by reason of a county line running through the same, the court shall have power to order and direct the sale of the interest of the decedent in the whole of said tract of land, irrespective of the county boundary line, and such sale, when con-

firmed, shall be as effectual to pass the title of such real estate as if the whole had been within the boundaries of the county having jurisdiction of the accounts of the executor or administrator: *Provided*, that notice of sale be given in all the counties in which the real estate is situated: *and provided*, that any mortgage, judgment-bond, or other obligation to secure the purchase-money or part thereof by lien on such lands, shall be duly recorded in each of the counties in which the land lies.

A few Decisions on the Subject of Sales of Minors' Real Estate.

(1.) The Orphans' Court has no power to allow the sale of a decedent's real estate for the payment of debts, where the lien of such is gone by lapse of time. *Benner v. Phillips*, 9 Watts & Sergeant, 13; *Bindley's Appeal*, 19 P. F. Smith, 295.

(2.) A power, given by will to sell real estate to pay debts, will authorize a mortgage of it. *Duval's Appeal*, 2 Wright, 112.

(3.) The court has no jurisdiction to order a sale of real estate for the payment of debts, where the decedent did not die seized of the land. *Shontz v. Brown*, 3 Casey, 123.

(4.) The petition to the Orphans' Court to sell lands of a decedent for the payment of debts should set forth, in accordance with the provisions of the 33d section of the Act of 29th March, 1832, *supra*, a true inventory of the personal property, a statement of the real estate, and the list of the debts should be minute and descriptive, and a first mortgage on the premises should not be included in the list, but mentioned apart. *Russell Thomas's Estate*, 3 Weekly Notes of Cases, 96.

(5.) Special notice of the sale of decedent's land need

not be given. A public notice is sufficient. *Stiver's Appeal*, 6 P. F. Smith, 9.

(6.) The Orphans' Court may order a sale of real estate to pay a first mortgage. *Crawford's Estate*, 27 *Pittsburg Legal Intelligencer*, 25.

(7.) No appeal lies from an order of sale of real estate to pay debts. *Snodgrass's Appeal*, 28 *Pittsburg Legal Intelligencer*, 127.

(8.) The doctrine of *caveat emptor* applies to a sale by an administrator for the payment of debts. *Bickley v. Biddle*, 9 *Casey*, 276.

(9.) If a purchaser at an Orphans' Court sale has a complaint to make, he should make it to the court before confirmation of the sale. *Fox v. Mench*, 3 *Watts & Sergeant*, 444.

(10.) The object of the Act of 18th April, 1853, *supra*, is not to settle questions of title to real estate, but to transmit title unencumbered. *Hower's Appeal*, 5 P. F. Smith, 337.

(11.) The design of the act of 1853 is well expressed in the preamble, which is to make real estate freely alienable and productive to living owners. *Burton's Appeal*, 7 P. F. Smith, 213.

(12.) A guardian, who sells his ward's interest in real estate under the Act of 1853, *supra*, which estate is liable to a life estate, is a trustee under the control of the court, and cannot be required to pay over the fund to another guardian appointed by the court of another county. *Packer's Estate*, 7 *Philadelphia*, 473.

(13.) When the estate is acquired partly by descent and partly by deed, the Orphans' Court and the Common Pleas have concurrent jurisdiction since the Act of 27th April, 1855, *supra*. *Reed v. Palmer*, 3 P. F. Smith, 379.

(14.) The terms of a sale may be amended by the

court, before the record is made up and closed. *Singerly v. Swain*, 9 Casey, 102.

(15.) If the executor at a sale take goods as part payment of the purchase-money, he is liable for the amount. *Mitchell's Estate*, 1 Legal Gazette, 74.

(16.) The court may confirm a sale made after the return-day fixed in the order. *Klingensmith v. Bean*, 2 Watts, 486.

(17.) After the confirmation of a sale, and a failure of the purchaser to comply with its conditions, compliance may be enforced as follows :

1st. By an action in the Common Pleas for the purchase-money.

2d. By application to court to set aside the sale.

3d. By proceedings in the Orphans' Court for specific performance. *Bell's Appeal*, 21 P. F. Smith, 465.

(18.) In the sale of the real estate by order of the court, where the land lies in another county than that wherein the letters are granted, the bond to secure the purchase-money should be given in the county where the first application was made. *Gordon's Appeal*, 12 Norris, 361.

(19.) Orphans' Court sales are the acts of the court and the party making the sale is the agent of the court. The court reserves the power to decline the purchaser's bid until the sale is confirmed. *Demmy's Appeal*, 7 Wright, 155.

(20.) The court may set aside a sale in partition for inadequacy of price. *Hamilton's Estate*, 1 P. F. Smith, 58.

(21.) The Constitution of 1874 has invested the Orphans' Court with the powers and duties of the Register's Court. *Commonwealth v. Clark*, 10 Philadelphia, 419.

The foregoing acts of Assembly authorize *sales* of a decedent's real estate by orders of court as therein set out, but *conveyances* of the real estate of a decedent may be ordered by the court under the provisions of the 1st section of the Act of 10th March, 1818, 7 Smith's Laws, 79, which relates to parol contracts of parties, and of section 15 of Act of 24th February, 1834, Pamphlet Laws, 75, where the contract was in writing ; but see, in regard to these and other acts on the subject, Volume 2. Rhone's Orphans' Court Practice, title Contracts.

As to the appointment of auditors, see same work, title Auditors.

The right to obtain the specific performance of contracts for the sale of real estate, is effected by the 6th section of the Act of 22d April, 1856, Pamphlet Laws, 532.

The right of any one to dispose by will or deed of property in such a manner that the profits thereof shall be accumulated for a longer term than the life of the grantor and twenty-one years after the death of such, is prohibited by the 9th section of the Act of 18th April, 1853, Pamphlet Laws, 507 ; Estate A. D. Washington, 8 Philadelphia, 182.

TABLE OF DISTRIBUTION AND DESCENT IN PENNSYLVANIA.

PERSONAL PROPERTY OF INTESTATES DOMICILED IN PENNSYLVANIA IS DISTRIBUTED AS FOLLOWS:

A 1.

Of one of either sex who dies *leaving neither wife nor husband nor issue*, but A FATHER AND MOTHER, OR EITHER, SURVIVING.

(1.) To the father and mother, or the survivor of such: Section 3 of the Intestate Act of 8th April, 1833, *supra*, 88; Gillan *v.* Dixon, 15 P. F. Smith, 395; Frank-
enfield *v.* Gruver, 7 Barr, 448; Mechling's Appeal, 2 Grant, 157; Weir's Estate, 13 Weekly Notes, 518.

A 2.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor father nor mother*, but COLLAT-
ERAL RELATIONS, as follows:

(1.) To (where there be no children or grandchildren of deceased brothers and sisters) the brothers and sisters, *without regard to whole or half blood*, share and share alike: Section 4, article 5, of Intestate Act of 1833, *supra*, 88.

(2.) To (in default of brothers and sisters, and grand-nephews or grandnieces, children of deceased nephews and nieces) the nephews and nieces, *per capita*: Section 4 of the Intestate Act of 1833, *supra*, 88; section 2 of Act of 1855, *supra*, 91. extends representation to the grandchildren of brothers and sisters.

(3.) To (in default of brothers and sisters and nephews and nieces) the grandnephews and -nieces, by *representation* (for the meaning of the word *representation*, see Mackeldey's *Roman Law*, by Dropsie, pages 160 and 503), each class taking equally amongst them the share, *per stirpes*,* the parent would have taken if living at the time of the death of the intestate: Section 4 of the Intestate Act of 1833, *supra*, 88; section 2 of Act of 1855, *supra*, 91.

(4.) To (in case the intestate leave brothers or sisters, and nephews or nieces being the children of deceased brothers and sisters, and grandnephews and -nieces being the children of deceased nephews and nieces):

1st. The brothers and sisters living, each the share such would have taken had all the brothers and sisters deceased, *leaving issue*, been alive at the death of the intestate.

2d. The nephews and nieces, children of deceased brothers and sisters, each class amongst them the share the parent would have taken had such been alive at the death of the intestate.

3d. The grandnephews and -nieces, children of deceased nephews and nieces, by *representation*, the share, *per stirpes*, the parent would have taken if living at the time of the death of the intestate: Section 4 of the Act of 1833, *supra*; section 2 of Act of 27th April, 1855, *supra*, 91; Krout's Appeal, 10 P. F. Smith, 380; Lane's Appeal, 4 Casey, 487.

(5.) To (in default of brothers and sisters, nephews and nieces, and grandnephews or -nieces) the descendants of the brothers and sisters *per capita*: Sections 4 and 8 of Act of 1833, *supra*, 88-89.

A 3.

Of one of either sex who dies *leaving neither wife nor*

* See page 186, *infra*.

husband nor issue nor father nor mother nor collateral relations as aforesaid, but GRANDPARENTS OR A GRANDPARENT, BEING THE NEXT OF KIN BY THE CIVIL LAW.

(1.) To such grandparents or grandparent: Section 7 of the Intestate Act of 1833, *supra*, 89; *McDowell v. Addams*, 9 Wright, 430.

A 4.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor father nor mother nor collateral relations as aforesaid, nor a grandparent as aforesaid*, but UNCLES AND AUNTS AS NEXT OF KIN.

(1.) To such uncles and aunts, *per capita*: Section 7 of Act of 1833, *supra*, 89; *Montgomery v. Petriken*, 5 Casey, 118.

A 5.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor father nor mother nor collateral relations as aforesaid, nor a grandparent nor uncle nor aunt*, but FIRST COUSINS AS NEXT OF KIN.

(1.) To such first cousins, by *representation*,* each class taking equally amongst them the share the parent would have taken if living at the time of the death of the intestate: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91; *Brenneman's Appeal*, 4 Wright, 115; *Hayes's Appeal*, 8 Norris, 256.

A 6.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor father nor mother nor collateral relations as aforesaid, nor a grandparent*, but UNCLES AND AUNTS, and FIRST COUSINS CHILDREN OF DECEASED UNCLES AND AUNTS.

* See page 186, *infra*.

(1.) To each uncle and aunt, the share such would have taken had all the uncles and aunts deceased, *leaving issue*, been alive at the time of the death of the intestate: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 27th April, 1855, *supra*, 91; *Danner v. Shissler*, 7 Casey, 289; *Montgomery v. Petriken*, 5 Casey, 118.

(2.) To each class of first cousins, by *representation*, equally amongst the members of such class, the shares *per stirpes*, the parent thereof would have been entitled to take if living at the death of the intestate: Section 7 of the Act of 1833, *supra*, 89; section 2 of the Act of 27th April, 1855, *supra*, 91; *Danner v. Shissler*, 7 Casey, 289.

A 7.

Of one of either sex who dies *leaving neither wife nor husband nor kindred as aforesaid*, but NEAREST OF KIN IN SOME OTHER MORE REMOTE DEGREE, by the Civil Law.

(1.) To such kin *per capita*; Section 7 of the Act of 1833, *supra*, 89. Section 8 of the said act, which provides, "that there shall be no *representation* admitted amongst collaterals after brothers' and sisters' children," is only repealed *pro tanto* by the 2d section of the Act of 27th April, 1855, *supra*, 91; *Brenneman's Appeal*, 4 Wright, 115.

A 8.

Of one of either sex who dies *leaving neither wife nor husband nor kin of any kind*.

(1.) To the Commonwealth of Pennsylvania by escheat: Section 12 of the Act of 1833, *supra*, 90; section 1 of Act of 17th April, 1869, *supra*, 91.

B 1.

Of a male married intestate who dies *leaving no issue of a deceased child*, but A WIDOW AND CHILDREN.

(1.) To the widow, one-third absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the children, two-thirds *per capita*: Section 1 of Act of 1833, *supra*, 87.

B 2.

Of a male married intestate who dies *leaving no children nor descendant of a deceased grandchild*, but A WIDOW AND GRANDCHILDREN.

(1.) To the widow, one-third absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the grandchildren, two-thirds *per capita*: Section 2 of Act of 1833, *supra*, 87; Storey's Appeal, 2 Norris, 97; Person's Appeal, 24 P. F. Smith, 123; Eshleman's Appeal, *ibid.*, 42.

B 3.

Of a male married intestate who dies *leaving no children*, but A WIDOW AND DESCENDANTS OTHER THAN AS ABOVE, ALL IN THE SAME DEGREE OF CONSANGUINITY.

(1.) To the widow, one-third absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the descendants, two-thirds *per capita*: Section 2 of Act of 1833, *supra*, 87; Person's Appeal, 24 P. F. Smith, 123.

B 4.

Of a male married intestate who dies LEAVING A WIDOW AND DESCENDANTS IN DIFFERENT DEGREES OF CONSANGUINITY, THE MORE REMOTE OF THEM BEING THE ISSUE OF A DECEASED CHILD, GRANDCHILD, OR OTHER DESCENDANT.

(1.) To the widow, one-third absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the descendants, two-thirds, to be distributed as follows:

1st. To each living child of the intestate, the share such child would have been entitled to had all the children *deceased, leaving issue*, been living at the time of the death of the intestate.

2d. To each grandchild, if there be no children, in like manner the share it would have received if all the grandchildren who shall then be dead, *leaving issue*, had been living at the death of the intestate, and so on, in like manner, to the remotest degree.

3d. In every such case, the issue of such deceased child, grandchild, or other descendant, shall take, by *representation* of their parents respectively, such share only as would have descended to such parents if they had been living at the death of the intestate: Section 2, article 4, of Act of 1833, *supra*, 88; *The Girard Life Insurance Company v. Wilson*, 7 P. F. Smith, 182; *McConkey v. McConkey*, 9 Watts, 352; *Hughes's Appeal*, 7 P. F. Smith, 179.

B 5.

Of a male married intestate who dies *leaving no issue*, but A WIDOW, AND FATHER AND MOTHER, OR FATHER OR MOTHER.

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the father and mother, or survivor, one-half absolutely: Section 3 of Act of 1833, *supra*, 88; see *Gillan v. Dixon*, 15 P. F. Smith, 395.

B 6.

Of a male married intestate who dies *leaving no issue*, but A WIDOW AND COLLATERAL HEIRS, AS STATED IN THE ACTS OF 1833 AND OF 1855, as follows:

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the following collateral heirs, one-half, to be distributed as follows:

1st. To (if there be no children or grandchildren of deceased brothers or sisters of the intestate) the brothers and sisters *per capita*: Section 4, article 5, of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91.

2d. To (if there be no grandchildren of deceased brother or sister living, or brothers or sisters living, but nephews and nieces) such nephews and nieces *per capita*: Section 4, article 5, of Act of 1833, *supra*, 88; Miller's Appeal, 4 Wright, 387.

3d. To (if there be brothers and sisters and nephews and nieces and children of nephews and nieces):

A. Each living brother and sister, the share such would have been entitled to receive had all the brothers and sisters, *deceased leaving issue*, been alive at the time of the death of the intestate.

B. Each class of living nephews or nieces by *representation*, such share *per stirpes* as the parent would have taken if living at the time of the death of the intestate. Section 4, article 5, of Act of 1833, *supra*, 88, 89; Krout's Appeal, 10 P. F. Smith, 380.

C. Each class of living children of nephews and nieces (grandnephews and grandnieces of the intestate) by *representation*, such share *per stirpes* as the parent would have taken if living at the time of the death of the intestate: Section 2 of Act of 27th April, 1855, *supra*, 91; Lane's Appeal, 4 Casey, 487; Krout's Appeal, 10 P. F. Smith, 380.

B 7.

Of a male married intestate who dies *leaving no issue, no brothers nor sisters nor descendants thereof, as before stated*, BUT A WIDOW AND NEXT OF KIN TO THE INTESTATE

BEING THE DESCENDANTS OF BROTHERS AND SISTERS MORE REMOTE THAN GRANDCHILDREN.

(1.) To the widow, one-half absolutely.

(2.) To such descendants of brothers and sisters *per capita*: Section 4, article 5, of the Act of 1833, *supra*, 89.

B 8.

Of a male married intestate who dies *leaving no issue, no father nor mother nor collateral relatives as before stated*, BUT A WIDOW AND GRANDPARENTS OR A GRANDPARENT, WHO ARE THEN NEXT OF KIN BY THE CIVIL LAW.

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the grandparents or grandparent, one-half: Section 7 of Act of 1833, *supra*, 89; *McDowell v. Adams*, 9 Wright, 430.

B 9.

Of a male married intestate who dies *leaving no issue, no father nor mother nor collateral relations as before stated, nor grandparent*, BUT A WIDOW AND UNCLES AND AUNTS AS NEXT OF KIN.

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the uncles and aunts *per capita*: Section 7 of Act of 1833, *supra*, 89; *Montgomery v. Petriken*, 5 Casey, 118.

B 10.

Of a male married intestate who dies *leaving no issue, no father nor mother nor collateral relatives, as before stated, nor grandparent nor uncles nor aunts*, BUT A WIDOW AND FIRST COUSINS AS NEXT OF KIN.

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the first cousins, one-half by *representation*,* as in A 5: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 27th April, 1855, *supra*, 91; Brenneman's Appeal, 4 Wright, 115; Hayes's Appeal, 8 Norris, 256.

B 11.

Of a male married intestate who dies *leaving no issue, no father nor mother nor collateral relatives as aforesaid, nor grandparent*, BUT A WIDOW AND UNCLES AND AUNTS AND COUSINS CHILDREN OF DECEASED UNCLES AND AUNTS.

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the uncles and aunts and first cousins children of deceased uncles and aunts, one-half, to be distributed as follows:

1st. To each uncle and aunt, the share such would have taken, had all the uncles and aunts, deceased *leaving issue*, been alive at the time of the death of the intestate: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 27th April, 1855, *supra*, 91; Danner *v.* Shissler, 7 Casey, 289; Montgomery *v.* Petriken, 5 Casey, 118.

2d. To each class of first cousins by *representation*, equally amongst the members of such class the share the parent thereof would have been entitled to have taken if living at the time of the death of the intestate: Section 7 of the Act of 1833, *supra*, 89; section 2 of the Act of 27th April, 1855, *supra*, 91; Danner *v.* Shissler, 7 Casey, 289. See, as to meaning of the word *representation*, Mackeldey's Roman Law, by Dropsie, pages 160 and 503.

B 12.

Of a male married intestate who dies *leaving no issue, no father nor mother nor collateral relatives as aforesaid*,

* See page 186, *infra*.

nor grandparents, BUT A WIDOW AND KIN IN SOME MORE REMOTE DEGREE BY THE CIVIL LAW.

(1.) To the widow, one-half absolutely: Section 1 of Act of 1833, *supra*, 87.

(2.) To the next of kin, one-half *per capita*: Sections 7 and 8 of Act of 1833, *supra*, 89.

B 13.

Of a male married intestate who dies *leaving no issue, and no father nor mother nor kindred of any kind*, BUT A WIDOW.

(1.) To the widow, all the personal estate: Section 10 of Act of 1833, *supra*, 89.

C 1.

Of a female married intestate who dies *leaving no issue of a deceased child*, BUT A WIDOWER AND CHILDREN.

(1.) To the widower, a share equal to the share of each of the children: Section 9 of Act of 11th April, 1848, *supra*, 91.

(2.) To each child, a share equivalent to what would be the sum, dividing the estate by the number of the children and the widower: Section 9 of Act of 11th April, 1848, *supra*, 91.

C 2.

Of a female married intestate *leaving no children and no descendant of a deceased grandchild*, BUT A WIDOWER AND GRANDCHILDREN.

(1.) To the widower, a share equal to the share each of the children deceased *leaving issue* would have taken if living: Section 9 of Act of 11th April, 1848, *supra*, 91.

(2.) To the grandchildren, the balance *per capita*: Section 2 of Act of 1833, *supra*, 87; Story's Appeal, 2 Norris, 97; Person's Appeal, 24 P. F. Smith, 123; Eshleman's Appeal, *ibid.*, 42.

C 3.

Of a female married intestate who dies *leaving no children*, BUT A WIDOWER AND GRANDCHILDREN AND GREAT-GRANDCHILDREN.

(1.) To the widower, a share equal to the share each of the children, deceased *leaving issue*, would have been entitled to, had such been living at the death of the intestate: Section 9 of Act of 11th April, 1848, *supra*, 91.

(2.) To the grandchildren, *per stirpes*, each class taking amongst them the share the parent would have taken if living at the time of the death of the intestate: Section 9 of Act of 11th April, 1848, *supra*, 91.

(3.) To the great-grandchildren, *per stirpes*, each class taking amongst them the share the parent would have taken if living at the time of the death of the intestate: Section 9 of Act of 11th April, 1848, *supra*, 91.

C 4.

Of a female married intestate who dies *leaving no children and no grandchildren*, BUT A WIDOWER AND GREAT-GRANDCHILDREN.

(1.) To the widower, a share equal to the share each of the children, deceased *leaving issue*, would have taken if living at the time of the death of the intestate: Section 9 of Act of 11th April, 1848, *supra*, 91.

(2.) To the great-grandchildren, the balance *per capita*: Section 2 of the Act of 1833, *supra*, 87; Story's Appeal, 2 Norris, 97; Person's Appeal, 24 P. F. Smith, 123; Eshleman's Appeal, *ibid.*, 42.

C 5.

Of a female married intestate who dies LEAVING A WIDOWER AND CHILDREN AND GRANDCHILDREN, OR ISSUE IN A MORE REMOTE DEGREE.

(1.) To the widower, a share equal to the share of each of the children alive and dead *leaving issue*: Section 9 of Act of 11th April, 1848, *supra*, 91.

(2.) To each child living, a share equivalent to what would be the sum, dividing the estate by the number of the children alive and *dead leaving issue* and the widower: Section 9 of Act of 11th April, 1848, *supra*, 91.

(3.) To the grandchildren or issue as aforesaid, *per stirpes*, each class taking amongst them the share the parent would have taken if living at the time of the death of the intestate: Section 9 of Act of 11th April, 1848, *supra*, 91.

C 6.

Of a female married intestate *leaving no issue*, BUT A WIDOWER AND COLLATERAL RELATIONS OR NEXT OF KIN.

(1.) To the widower, all the personalty: Section 1 of Act of 8th April, 1833, *supra*, 87; section 9 of Act of 11th April, 1848, *supra*, 91.

REAL PROPERTY HELD BY INTESTATES IN PENNSYLVANIA, AS HEREINAFTER SET FORTH,
DESCENDS AS FOLLOWS:

FIRST.

WHEN ACQUIRED BY THE INTESTATE BY PURCHASE, BUT NOT GIVEN OR DEVISED BY A RELATION. See section 9 of Act of 1833, *supra*, 89.

A 1.

Of one of either sex who dies *leaving neither wife nor husband nor issue*, BUT A FATHER AND MOTHER, OR EITHER, AND COLLATERAL HEIRS, as set forth as follows:

(1.) To the father and mother, or the survivor, *for life*: Section 3 of Act of 1833, *supra*, 88; *Moyer v. Thomas*, 2 Wright, 426.

(2.) To the collateral heirs of the whole blood, the fee (subject to (1.)), as follows:

1st. To (where there be no nephews and nieces, children of deceased brothers and sisters, or grandnephews or -nieces, grandchildren of brothers and sisters) the brothers and sisters of the whole blood, *per capita*: Section 4, article 1, of Act of 1833, *supra*, 88; section 2 of Act of 1855, *supra*, 91; *Stark v. Stark*, 5 P. F. Smith, 62.

2d. To (where there be neither brothers nor sisters nor grandnephews or -nieces, grandchildren of deceased brothers and sisters) the nephews and nieces of the whole blood, *per capita*: Section 4, article 2, of Act of 1833, *supra*, 88; section 2 of Act of 1855, *supra*, 91.

3d. To (in default of brothers and sisters, nephews and nieces of the whole blood) the grandnephews and -nieces of the whole blood by *representation* (for the meaning of the word *representation*, see Mackeldey's Roman Law,

by Dropsie, pages 160 and 503), each class taking equally amongst them the share the parent would have taken if living at the time of the death of the intestate: Section 2 of Act of 1855, *supra*, 91.*

4th. To (in case the intestate leave of the whole blood brothers or sisters, and also nephews or nieces, and grand-nephews or -nieces, being the children and grandchildren of deceased brothers and sisters) :

A. The said brothers and sisters living, each the share such would have taken, had all the said brothers and sisters, *deceased leaving issue*, been alive at the death of the intestate.

B. The nephews and nieces, children of deceased brothers and sisters of the whole blood, each class, amongst the members thereof, the share the parent thereof would have taken had such been alive at the death of the intestate.

C. The grandnephews and -nieces, children of deceased nephews and nieces, each class taking by *representation* the share the parent of such would have taken had such been alive at the time of the death of the intestate: Section 4, article 3, of Act of 1833, *supra*, 88; section 2 of Act of 1855, *supra*, 91; Krout's Appeal, 10 P. F. Smith, 380; Lane's Appeal, 4 Casey, 487.

5th. To (in default of brothers and sisters, nephews and nieces, and grandnephews or -nieces, as aforesaid) the descendants of the said brothers and sisters of the whole blood, *per capita*: Sections 4 and 8 of Act of 1833, *supra*, 88, 89.

A 2.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral heirs of the whole blood and descendants thereof as before said*, BUT A FATHER AND MOTHER OR EITHER.

* See page 186, *infra*.

(1.) To the father and mother, or survivor, *in fee*: Section 5 of Act of 1833, *supra*, 89; *McWilliams v. Ross*, 10 Wright, 369.

A 3.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral relations of the whole blood as aforesaid, nor father nor mother*, BUT BROTHERS AND SISTERS OF THE HALF BLOOD.

(1.) To the said brothers and sisters of the half blood of the intestate, and to their issue in like manner respectively as is hereinbefore set forth in cases of brothers and sisters of the whole blood and their issue: Section 6 of Act of 1833, *supra*, 89; *Baker v. Chalfant*, 5 Wharton, 477.

A 4.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral relations as aforesaid, nor father nor mother*, BUT GRANDPARENTS OR A GRANDPARENT BEING THE NEXT OF KIN BY THE CIVIL LAW.

(1.) To the said grandparents, or survivor, *in fee*: Section 7 of Act of 1833, *supra*, 89; *McDowell v. Addams*, 9 Wright, 430.

A 5.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral relations as aforesaid, nor father nor mother nor grandparents, nor children of deceased uncles and aunts*, BUT UNCLES AND AUNTS IRRESPECTIVE OF BLOOD AS NEXT OF KIN.

(1.) To the said uncles and aunts irrespective of blood, *per capita*: Section 7 of Act of 1833, *supra*, 89; *Danner v. Shissler*, 7 Casey, 289.

A 6.

Of one of either sex who dies *leaving neither wife nor*

husband nor issue nor collateral relations as aforesaid, nor father nor mother nor grandparent, nor uncle nor aunt, BUT FIRST COUSINS IRRESPECTIVE OF BLOOD, AS NEXT OF KIN.

(1.) To such first cousins by *representation*,* each class taking amongst the members thereof the share the parent of such would have taken if living at the time of the death of the intestate: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91; Brenneman's Appeal, 4 Wright, 115; Hayes's Appeal, 8 Norris, 256; Kiegel's Appeal, 12 Weekly Notes, 179.

A 7.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral relations as aforesaid, nor father nor mother nor grandparent, BUT UNCLES AND AUNTS AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES OR AUNTS.*

(1.) To each uncle and aunt, irrespective of blood, the share such would have taken had all the uncles and aunts, *deceased leaving issue*, been alive at the time of the death of the intestate: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91; Danner v. Shissler, 7 Casey, 289; Montgomery v. Petriken, 5 Casey, 118.

(2.) To each class of first cousins, irrespective of blood, by *representation* equally amongst the members thereof, such share as the parent thereof would have been entitled to take if living at the death of the intestate: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91; Danner v. Shissler, 7 Casey, 289.

A 8.

Of one of either sex who dies *leaving neither wife nor*

* See page 186, *infra*.

husband nor kindred as aforesaid, BUT NEAREST OF KIN IN SOME MORE REMOTE DEGREE.

(1.) To such nearest of kin, *per capita* : Section 7 of Act of 1833, *supra*, 89 ; section 8 of the said act, which provides "that there shall be no representation admitted amongst collaterals after brothers' and sisters' children," is only repealed *pro tanto* by section 2 of the Act of 1855, *supra*, 91 ; Brenneman's Appeal, 4 Wright, 115 ; Hayes's Appeal, 8 Norris, 256.

A 9.

Of one of either sex who dies *leaving neither wife nor husband, nor kin of any kind.*

(1.) To the Commonwealth of Pennsylvania by escheat : Section 12 of Act of 1833, *supra*, 90 ; section 1 of Act of 1869, *supra*, 91.

B 1.

Of a married intestate who dies *leaving no issue of a deceased child, BUT A SPOUSE, A FATHER AND MOTHER OR EITHER, AND CHILDREN.*

If Intestate be a Male.

(1.) To the widow, her dower of one-third : Section 1, article 1, of Act of 1833, *supra*, 87.

(2.) To the children, *per capita*, the fee : Section 2 of Act of 1833, *supra*, 87.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy : Section 1, article 3, Act of 1833, *supra*, 87.

(2.) To the children, *per capita*, the fee : Section 2, article 1, Act of 1833, *supra*, 87.

B 2.

Of a married intestate who dies *leaving no children nor descendants of a deceased grandchild*, BUT A SPOUSE, A FATHER AND MOTHER, OR EITHER, AND GRANDCHILDREN.

If Intestate be a Male.

- (1.) To the widow, her dower of one-third, as in B 1.
- (2.) To the grandchildren, *per capita*, the fee: Section 2, article 2, Act of 1833, *supra*, 87.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 1.
- (2.) To the grandchildren, *per capita*, the fee, as above.

B 3.

Of a married intestate who dies *leaving no children*, BUT A SPOUSE, A FATHER AND MOTHER, OR EITHER, AND DESCENDANTS IN ANY OTHER DEGREE OF CONSANGUINITY, HOWEVER REMOTE FROM HIM, AND ALL IN THE SAME DEGREE OF CONSANGUINITY TO HIM.

If Intestate be a Male.

- (1.) To the widow, her dower of one-third, as in B 1.
- (2.) To the said descendants, *per capita*, the fee: Section 2, article 3, Act of 1833, *supra*, 88.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 1.
- (2.) To the said descendants, *per capita*, the fee, as above.

B 4.

Of a married intestate who dies *leaving* A SPOUSE, A FATHER AND MOTHER, OR EITHER, AND DESCENDANTS IN

DIFFERENT DEGREES OF CONSANGUINITY, THE MORE REMOTE OF THEM BEING THE ISSUE OF A DECEASED CHILD, GRANDCHILD, OR OTHER DESCENDANT.

If Intestate be a Male.

(1.) To the widow, her dower of one-third, as in B 1.

(2.) To the said descendants, as follows:

1st. To each living child of the intestate, the share of the fee such child would have taken had all the children *deceased leaving issue* been living at the death of the intestate.

2d. To each living grandchild, if there be no children, in like manner the share of the fee it would have taken if all the grandchildren, *deceased leaving issue*, had been living at the death of the intestate, and so on in like manner to the remotest degree.

3d. In every such case the issue of such deceased child, grandchild, or other descendant, shall take by *representation* of their parents respectively such share of the fee only as would have descended to such parents if they had been living at the death of the intestate: Section 2, article 4, of Act of 1833, *supra*, 88; Girard Life Insurance Company *v.* Wilson, 7 P. F. Smith, 182; McConkey *v.* McConkey, 9 Watts, 352; Hughes's Appeal, 7 P. F. Smith, 179.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the descendants, as aforesaid.

B 5.

Of a married intestate who dies *leaving no issue*, BUT A SPOUSE, A FATHER AND MOTHER, OR EITHER, AND COLLATERAL HEIRS, AS HEREINAFTER SET FORTH, OF THE WHOLE BLOOD.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half: Section 1, article 2, of Act of 1833, *supra*, 87.

(2.) To the father and mother, or either, a life estate: Section 3 of Act of 1833, *supra*, 88.

(3.) To the said collateral heirs, as follows, the fee:

1st. To (if there be no children or grandchildren of brothers and sisters of the whole blood) the brothers and sisters of the whole blood, *per capita*, the fee.

2d. To (if there be no brothers or sisters of the whole blood living, or grandchildren of such brothers and sisters) the nephews and nieces being the children of deceased brothers and sisters of the whole blood, the fee, *per capita*.

3d. To (if there be no brothers or sisters, or nephews or nieces of the whole blood) the grandnephews and -nieces, grandchildren of such brothers and sisters, the fee, by *representation*, each class thereof taking amongst the members thereof the share the parent thereof would have taken if living at the death of the intestate.*

4th. To (in case the intestate leave of the whole blood brothers and sisters, and also nephews and nieces, and grandnephews and -nieces, being the children and grandchildren of deceased brothers and sisters of the whole blood):

A. The said brothers and sisters living, each the share of the fee such would have taken had all such brothers and sisters, *deceased leaving issue*, been living at the death of the intestate.

B. The said nephews and nieces, children of deceased brothers and sisters of the whole blood, each class thereof amongst the members thereof the share of the fee the parent thereof would have taken if living at the death of the intestate.

* See page 186, *infra*.

C. The said grandnephews and -nieces, children of such deceased nephews and nieces, each class thereof amongst the members thereof the share of the fee the parent thereof would have taken if living at the death of the intestate: Section 4, article 3, of Act of 1833, *supra*, 88; section 2 of Act of 1855, *supra*, 91; Krout's Appeal, 10 P. F. Smith, 380; Lane's Appeal, 4 Casey, 487.

5th. To (in default of brothers and sisters, nephews and nieces, and grandnephews and -nieces of the whole blood, as aforesaid) the next of kin of the intestate being the descendants of his brothers and sisters of the whole blood, *per capita*, the fee: Section 4, article 4, of Act of 1833, *supra*, 89.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the father and mother, or survivor, the possibility of a life estate on the death of the widower: Section 3 of Act of 1833, *supra*, 88.

(3.) To the collateral heirs, as aforesaid.

B. 6.

Of a married intestate who dies *leaving no issue, no collateral heirs of the whole blood, as aforesaid, BUT A SPOUSE, AND A FATHER AND A MOTHER, OR EITHER.*

If Intestate be a Male.

(1.) To the widow, her life estate of one-half: Article 2 of section 1 of Act of 1833, *supra*, 87.

(2.) To the father and mother, or the survivor, the fee: Section 5 of Act of 1833, *supra*, 89.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the father and mother, or the survivor, the fee, as above.

B 7.

Of a married intestate who dies *leaving no issue, no collateral heirs of the whole blood, no father or mother,* BUT A SPOUSE, AND BROTHERS AND SISTERS OF THE HALF BLOOD OF THE INTESTATE.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the brothers and sisters of the half blood, the fee, and to their issue in like manner, respectively as is hereinbefore set forth in cases of brothers and sisters of the whole blood and their issue: Section 6, Act of 1833, *supra*, 89; *Baker v. Chalfant*, 5 Wharton, 477; see B 5, *supra*.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the brothers and sisters of the half blood, as before set forth.

B 8.

Of a married intestate who dies *leaving no issue nor collateral heirs of the whole blood, as aforesaid, no father nor mother, and no brothers and sisters of the half blood,* BUT A SPOUSE, AND GRANDPARENTS OR A GRANDPARENT, BEING THE NEXT OF KIN BY THE CIVIL LAW.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the grandparents or grandparent, *per capita*, the fee: Section 7 of Act of 1833, *supra*, 89; *McDowell v. Addams*, 9 Wright, 430.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the grandparents or grandparent, as before-said.

B 9.

Of a married intestate who dies *leaving no issue, no collateral heirs, as beforesaid, no father nor mother, no brothers and sisters nor issue thereof of the half blood, and no first cousins, children of deceased uncles and aunts,* BUT A SPOUSE, AND UNCLES AND AUNTS OF THE WHOLE BLOOD, AND UNCLES AND AUNTS OF THE HALF BLOOD.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the uncles and aunts irrespective of blood, *per capita*, the fee: Section 7 of Act of 1833, *supra*, 89; *Danner v. Shissler*, 7 Casey, 289.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the uncles and aunts, as abovesaid.

B 10.

Of a married intestate who dies *leaving no issue, no collateral heirs, as beforesaid, no father nor mother, no brother nor sister of the half blood, no uncle nor aunt, as beforesaid,* BUT A SPOUSE, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS, SOME OF WHOLE BLOOD SOME OF HALF BLOOD.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the cousins, irrespective of blood, *per stirpes*,* the fee, each class thereof taking amongst the members thereof the share the parent would have taken if living at the death of the intestate: Kiegel's Appeal, 12 Weekly Notes, 179.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the cousins the fee as abovesaid :* Section 7 of Act of 1833, *supra*, 89 ; section 2 of Act of 1855, *supra*, 91 ; Brenneman's Appeal, 4 Wright, 115 ; Hayes's Appeal, 8 Norris, 256 ; Kiegel's Appeal, 12 Weekly Notes, 179.

B 11.

Of a married intestate who dies *leaving no issue, no collateral heirs as beforesaid, no father nor mother, no brother nor sister of the half blood, no grandparent*, BUT A SPOUSE, AND UNCLES AND AUNTS, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To each uncle and aunt, the share of the fee such would have taken had all the uncles and aunts, deceased *leaving issue*, been living at the death of the intestate.

(3.) To each class of first cousins, by *representation*, amongst such class the share of the fee the parent would have taken had such been living at the death of the intestate.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

* See page 186, *infra*.

(2.) To the uncles and aunts, as abovesaid.

(3.) To the cousins, as abovesaid: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91; *Danner v. Shissler*, 7 Casey, 289.

B 12.

Of a married intestate who dies *leaving no issue, no collateral heirs as beforesaid, no father nor mother, no brother nor sister of the half blood nor issue thereof, no grandparent, no uncle nor aunt nor first cousin, BUT A SPOUSE, AND NEXT OF KIN IN A MORE REMOTE DEGREE.*

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the next of kin, *per capita*, as in A 8.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the next of kin, *per capita*, the fee, as in A 8.

B. 13.

Of a married intestate who dies *leaving no issue nor kin of any kind, BUT A SPOUSE.*

(1.) To the spouse, the fee: Section 10 of Act of 1833, *supra*, 89; see *Broad Top Coal Co. v. Riddlesburg Coal Co.*, 15 P. F. Smith, 435.

B 14.

Of an intestate who dies *leaving no issue, kin, nor spouse.*

(1.) To the Commonwealth of Pennsylvania, by escheat, as in A 9.

SECOND.

WHEN ACQUIRED BY THE INTESTATE BY DESCENT FROM A PARENT OF THE INTESTATE, WHO WAS THE PURCHASER.

C 1.

Of one of either sex who dies *leaving neither wife nor husband nor issue*, BUT A FATHER OR MOTHER FROM WHOM THE ESTATE DID NOT DESCEND, AND COLLATERAL HEIRS AS IN B 5.

(1.) To such father or mother, for life: Section 3 of Act of 1833, *supra*, 88.

(2.) To such collateral heirs, as in B 5.

C 2.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral heirs as in B 5*, BUT A FATHER OR MOTHER AS IN C 1, AND HALF BROTHERS AND SISTERS, CHILDREN, BY ANOTHER FATHER OR MOTHER, OF THE PARENT FROM WHOM THE ESTATE DID DESCEND.

(1.) To such father or mother, a life estate, as in C 1.

(2.) To such half brothers and sisters, *per capita*, the fee, and to their issue, as in cases of other collateral heirs, as in B 5: *Baker v. Chalfant*, 5 Wharton, 477.

C 3.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral heirs as in C 1, nor half brothers and sisters as in C 2, nor first cousins, children of deceased uncles and aunts of the blood of the purchaser*, BUT A FATHER OR MOTHER AS IN C 1, AND UNCLES AND AUNTS, BROTHERS AND SISTERS (OF THE BLOOD WHOLE OR HALF) OF THE PARENT FROM WHOM THE ESTATE DESCENDED.

(1.) To the said father or mother, an estate for life, as in C 1.

(2.) To the said uncles and aunts, *per capita*, the fee: *May v. Espenshade*, 1 *Pearson*, 139; *Danner v. Shissler*, 7 *Casey*, 289; *Estate of Wm. Lee*, 15 *Philadelphia*, 545.

C 4.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral heirs as in C 1, nor half brothers as in C 2*, BUT A FATHER OR MOTHER AS IN C 1, AND FIRST COUSINS OF THE BLOOD OF THE PURCHASER.

(1.) To such father or mother, an estate for life, as in C 1.

(2.) To each class of such first cousins, by representation, the fee: Section 7 of Act of 1833, *supra*, 89; section 2 of Act of 1855, *supra*, 91; *Hayes's Appeal*, 8 *Norris*, 256.*

C 5.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral heirs as in C 1, nor half brothers and sisters as in C 2*, BUT A FATHER AND MOTHER AS IN C 1, AND UNCLES AND AUNTS OF THE BLOOD OF THE PARTY FROM WHOM THE ESTATE DESCENDED, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS OF THE BLOOD OF THE SAID PARENT, THE PURCHASER.

(1.) To the said father and mother, a life estate, as in C 1.

(2.) To each of such uncles and aunts, the share the same would have taken had all the uncles and aunts of the blood of the purchaser deceased leaving issue been alive at the death of the intestate.

(3.) To each class of the said first cousins, by *representation*, the share of the fee the parent thereof would

* See page 186, *infra*.

have taken had such been living at the death of the intestate: *Danner v. Shissler*, 7 Casey, 289; *Brenneman's Appeal*, 4 Wright, 115; *Hayes's Appeal*, 8 Norris, 256.

C 6.

Of one of either sex who dies *leaving neither wife nor husband nor issue nor collateral heirs, as mentioned in C 1, nor uncles and aunts nor first cousins of the blood of the purchaser*, BUT A FATHER, OR A MOTHER, AS SET FORTH IN C 1, AND NEXT OF KIN OF THE BLOOD OF THE PURCHASER IN THE ASCENDING LINE.

(1.) To the said father or mother, for life: Section 3 of Act of 1833, *supra*, 88.

(2.) To the next of kin, by the civil law, of the blood of the purchaser in the ascending line, the fee, *per capita*: *Brenneman's Appeal*, 4 Wright, 115; *Hayes's Appeal*, 8 Norris, 256.

C 7.

Of one of either sex who dies *leaving neither wife nor husband nor issue, nor kindred of any kind of the blood of the purchaser, in the descending line*, BUT A FATHER OR A MOTHER, AS IN C 1, AND NEXT OF KIN OF THE PURCHASER IN THE DESCENDING LINE.

(1.) To the said father or mother, an estate for life, as in C 1.

(2.) To the said next of kin, by the civil law, of the purchaser in the descending line, the fee, *per capita*: *May v. Espenshade*, 1 Pearson, 139.

C 8.

Of one of either sex who dies *leaving neither wife nor husband nor issue, nor brothers nor sisters*, BUT A GRANDPARENT OF THE BLOOD OF THE PURCHASER, AND AN UNCLE OF THE BLOOD OF THE PURCHASER.

(1.) To such grandparent, as next of kin of the blood

of the purchaser, the fee: *Nichol v. Hall*, Pittsburgh L. J. of 1881, 239; *contra*, *May v. Espenshade*, 1 Pearson, 139.

C 9.

Of one of either sex who dies *leaving neither husband nor wife nor issue nor collateral relations nor kindred of the blood of the purchaser, nor father nor mother, as aforesaid*, BUT NEXT OF KIN BY THE CIVIL LAW IN A MORE REMOTE DEGREE.

(1.) To such next of kin, in fee; and such classification would be, besides those already stated:

1st. Grandparents and their issue.

2d. Great-grandparents and their issue.

3d. And so on *ad infinitum*.

See *Dowell v. Thomas*, 1 Harris, 41; *Lewis v. Gorman*, 5 Barr, 164.

C 10.

Of one of either sex who dies *leaving neither husband nor wife nor issue, nor father nor mother, nor kindred of any kind*.

(1.) To the Commonwealth of Pennsylvania by escheat: Section 12 of Act of 1833, *supra*, 90.

D 1.

Of a married intestate who dies *leaving no issue of a deceased child*, BUT A SPOUSE, A FATHER OR MOTHER, FROM WHOM THE ESTATE DID NOT DESCEND, AND CHILDREN.

If Intestate be a Male.

(1.) To the widow, her dower of one-third: Section 1, article 1, of Act of 1833, *supra*, 87.

(2.) To the children, *per capita*, the fee, as in B 1.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy : Section 1, article 3, of Act of 1833, *supra*, 87.

(2.) To the children, *per capita*, the fee, as in B 1.

D 2.

Of a married intestate who dies *leaving no children nor descendants of a deceased grandchild*, BUT A SPOUSE, A FATHER OR MOTHER AS AFORESAID, AND GRANDCHILDREN.

If Intestate be a Male.

(1.) To the widow, her dower of one-third, as in B 1.

(2.) To the grandchildren, *per capita*, the fee, as in B 2.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the grandchildren, *per capita*, the fee, as in B 2.

D 3.

Of a married intestate who dies *leaving no children*, BUT A SPOUSE, AND DESCENDANTS IN ANY OTHER DEGREE OF CONSANGUINITY TO HIM, HOWEVER REMOTE FROM HIM, AND ALL IN THE SAME DEGREE OF CONSANGUINITY TO HIM.

If Intestate be a Male.

(1.) To the widow, her dower of one-third, as in D 1.

(2.) To the said descendants, *per capita*, the fee, as in B 3.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 3.

(2.) To the said descendants, *per capita*, the fee, as in B 3.

D 4.

Of a married intestate who dies *leaving* A SPOUSE, A

FATHER OR MOTHER AS AFORESAID, AND DESCENDANTS IN DIFFERENT DEGREES OF CONSANGUINITY TO HIM, OR HER THE MORE REMOTE BEING THE ISSUE OF A DECEASED CHILD, GRANDCHILD, OR OTHER DESCENDANT.

If Intestate be a Male.

- (1.) To the widow, her dower of one-third, as in B 4.
- (2.) To the said descendants, the fee, as in B 4.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 4.
- (2.) To the said descendants, the fee, as in B 4.

D 5.

Of a married intestate, who dies *leaving no issue*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, AND COLLATERAL HEIRS, AS IN B 5.

If Intestate be a Male.

- (1.) To the widow, her life estate of one-half, as in B 5.
- (2.) To the father or mother, a life estate, as in B 5.
- (3.) To the said collateral heirs, the fee, as in B 5.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 5.
- (2.) To the father or mother, the possibility of a life estate, as in B 5.
- (3.) To the said collateral heirs, the fee, as in B 5; *Irwin v. Covode*, 12 Harris, 162.*

D 6.

Of a married intestate who dies *leaving no issue, no collateral heirs as aforesaid*, BUT A SPOUSE, A FATHER OR

* See *infra*, page 186.

MOTHER, AS IN D 1, AND HALF BROTHERS AND SISTERS OF THE BLOOD OF THE PARENT FROM WHOM THE ESTATE DESCENDED, AS IN C 2.

If Intestate be a Male.

- (1.) To the widow, her life estate of one-half, as in B 6.
- (2.) To the said father or mother, a life estate, as in B 5.
- (3.) To the said half brothers and sisters, the fee, and to their issue in like manner as is hereinbefore set forth in B 5, in cases of brothers and sisters of the whole blood.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 6.
- (2.) To the said father or mother, the possibility of a life estate, as in B 5.
- (3.) To the said half brothers and sisters, the fee, and to their issue, as beforesaid: *Montgomery v. Petriken*, 5 Casey, 118; *Maffit v. Clark*, 6 Watts & Sergeant, 258; *Hart's Appeal*, 8 Barr, 32.

D 7.

Of a married intestate who dies *leaving no issue, no collateral heirs as in D 5, no half brothers and sisters as in D 6, and no first cousins, children of deceased uncles and aunts of the blood of the purchaser*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, AND UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER, AND UNCLES AND AUNTS OF THE BLOOD OF THE PARENT FROM WHOM THE ESTATE DID NOT DESCEND.

If Intestate be a Male.

- (1.) To the widow, her life estate of one-half, as in B 5.
- (2.) To the said father or mother, a life estate, as in B 5.

(3.) To the said uncles and aunts of the blood of the purchaser, *per capita*, the fee, as in C 3.

(4.) To the said uncles and aunts not of the blood, nothing.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the said father or mother, the possibility of a life estate, as in B 5.

(3.) To the said uncles and aunts of the blood of the purchaser, *per capita*, the fee, as in C 3.

(4.) To the said uncles and aunts not of the blood, nothing: *McWilliams v. Ross*, 10 Wright, 372; *Gilmore v. Ross*, 2 Pittsburgh, 50; *Walker v. Dunshee*, 2 Wright, 430; *Maffit v. Clark*, 6 Watts & Sergeant, 258.

D 8.

Of a married intestate who dies *leaving no issue, no collateral heirs as in D 5, no half brothers and sisters nor issue thereof as in D 6, and no first uncles and aunts of the blood of the purchaser*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER, AND FIRST COUSINS OF THE BLOOD OF THE PARENT FROM WHOM THE ESTATE DID NOT DESCEND.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the said father or mother, a life estate, as in B 5.

(3.) To the first cousins of the blood of the purchaser, by *representation*, each class thereof a share of the fee, as in C 4.*

(4.) To the first cousins not of the blood of the purchaser, nothing.

* See page 186, *infra*.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the said father or mother, the possibility of a life estate.

(3.) To the said first cousins of the blood of the purchaser, by representation, the fee, as in C 4.*

(4.) To the said first cousins not of the blood of the purchaser, nothing: Kiegel's Appeal, 12 Weekly Notes, 179.

D 9.

Of a married intestate who dies *leaving no issue, no collateral heirs as in D 5, no half brothers and sisters, nor issue thereof, as in D 6, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER, AND FIRST COUSINS OF THE BLOOD OF THE PURCHASER.*

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the said father or mother, a life estate, as in B 5.

(3.) To the said uncles and aunts, as set forth in C 5, the share of the fee.

(4.) To the said first cousins, as set forth in C 5, the share of the fee.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the said father or mother, the possibility of a life estate, as in B 5.

(3.) To the said uncles and aunts, as set forth in C 5, the share of the fee.

(4.) To the said first cousins, as set forth in C 5, the share of the fee.

* See page 186, *infra*.

D 10.

Of a married intestate who dies *leaving no issue, no collateral heirs as in D 5, no half brothers and sisters, nor issue thereof, as in D 6, no uncles and aunts nor first cousins of the blood of the purchaser*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, AND NEXT OF KIN, OTHER THAN AS ABOVE, IN THE DESCENDING LINE OF THE BLOOD OF THE PURCHASER.

If Intestate be a Male.

- (1.) To the widow, her life estate of one-half, as in B 5.
- (2.) To the said father or mother, a life estate, as in B 5.
- (3.) To the said next of kin in the descending line, *per capita*, the fee: *May v. Espenshade*, 1 Pearson, 139.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 1.
- (2.) To the said father and mother, the possibility of a life estate, as in B 5.
- (3.) To the said next of kin in the descending line, *per capita*, the fee, as beforesaid.

D 11.

Of a married intestate *who dies leaving no issue, no collateral heirs, no half brothers and sisters nor their issue, nor kin of the blood of the purchaser in the descending line*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, AND NEXT OF KIN OF THE BLOOD OF THE PURCHASER IN THE ASCENDING LINE FROM THE PURCHASER.

If Intestate be a Male.

- (1.) To the widow, an estate for life of one-half, as in B 5.

(2.) To the said father or mother, a life estate, as in B 5.

(3.) To the next of kin of the blood of the purchaser in the ascending line, the fee: *May v. Espenshade*, 1 Pearson, 139; *Nichol v. Hall*, Pittsburgh L. J., 1881, 239.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 1.

(2.) To the said father or mother, the possibility of a life estate, as in B 5.

(3.) To the next of kin of the blood of the purchaser in the ascending line, the fee: *May v. Espenshade*, 1 Pearson, 139; *Nichol v. Hall*, *supra*.

D 12.

Of a married intestate of either sex who dies *leaving no issue, no collateral heirs, half brothers and sisters, nor kindred of any kind of the blood of the purchaser*, BUT A SPOUSE, AND A FATHER OR MOTHER, FROM WHOM THE ESTATE DID NOT DESCEND.

(1.) To the spouse, under the 10th section of the Act of 1833, *supra*, 89: *Broad Top Coal Co. v. Riddlesburg Coal Co.*, 15 P. F. Smith, 435.

D 13.

Of an intestate of either sex who dies *leaving no issue, no heirs of any kind of the blood of the purchaser, no spouse*, BUT A FATHER OR MOTHER FROM WHOM THE ESTATE DID NOT DESCEND, AS NEAREST OF KIN BY THE CIVIL LAWS, AND HALF BROTHERS AND SISTERS, CHILDREN OF SUCH FATHER OR MOTHER.

(1.) To the said father or mother, as next of kin, as in C 8.

D 14.

Of an intestate of either sex who dies *leaving no issue, no heirs of any kind of the blood of the purchaser, no*

spouse, and no father or mother as aforesaid, BUT NEXT OF KIN BY THE CIVIL LAW IN A MORE REMOTE DEGREE.

(1.) To such next of kin, as in C 9.

D 15.

Of an intestate of either sex who dies *leaving no issue nor heirs of any kind as aforesaid.*

(1.) To the Commonwealth of Pennsylvania by escheat, as in C 10.

THIRD.

WHEN ACQUIRED BY THE INTESTATE BY DESCENT FROM A GRANDPARENT OF THE INTESTATE WHO WAS THE PURCHASER.

E 1.

Of one of either sex who dies *leaving neither wife nor husband nor issue, BUT A FATHER OR MOTHER NOT OF THE BLOOD, AND THROUGH WHOM THE ESTATE DID NOT DESCEND, AND COLLATERAL HEIRS, AS IN A 1.*

(1.) To such father or mother, a life estate, as in C 1.

(2.) To such collateral heirs, as in B 5.

E 2.

Of one of either sex who dies *leaving neither wife nor husband nor issue, BUT A FATHER OR MOTHER NOT OF THE BLOOD, AND THROUGH WHOM THE ESTATE DID NOT DESCEND, AND HALF BROTHERS AND SISTERS, AND DESCENDANTS THEREOF, OF THE BLOOD OF THE PARENT THROUGH WHOM THE ESTATE DID DESCEND, AND HALF BROTHERS AND SISTERS OF THE BLOOD OF THE PARENT THROUGH WHOM THE ESTATE DID NOT DESCEND, BY ANOTHER SPOUSE.*

- (1.) To said father and mother, for life, as in C 1.
- (2.) To the said half brothers and sisters of the blood of the parent from whom the estate descended, and the issue thereof, the fee, as in C 1.
- (3.) To the said half brothers and sisters not of the blood, nothing.

E 3.

Of one of either sex who dies *leaving neither wife nor husband, nor issue, nor collateral heirs, as in E 1, nor half brother or sister of the blood, as in E 2, nor first cousins, children of deceased uncles and aunts of the blood of the purchaser*, BUT A FATHER OR MOTHER, AS IN E 1, AND GRANDPARENTS, OR A GRANDPARENT, FROM WHOM THE ESTATE DID NOT DESCEND, AND UNCLES AND AUNTS OF THE BLOOD OF THE GRANDPARENT FROM WHOM THE ESTATE DID DESCEND, AND UNCLES AND AUNTS NOT OF THE BLOOD OF SUCH PURCHASER.

- (1.) To the said father or mother, a life estate, as in C 1.
- (2.) To the said grandparents or grandparent, nothing.
- (3.) To the said uncles and aunts of the blood of the purchaser, *per capita*, the fee.
- (4.) To the said uncles and aunts not of the blood, nothing.

E 4.

Of one of either sex who dies *leaving neither wife nor husband, nor issue, nor collateral heirs as in E 1, nor half brothers and sisters, nor their issue, as in E 2, nor uncles and aunts of the blood of the purchaser*, BUT A FATHER OR MOTHER, AS IN E 1, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER.

- (1.) To said father or mother, a life estate, as in B 1.
- (2.) To said first cousins, the fee by *representation*, each class thereof taking the share the parent thereof would have taken if living at the death of the intestate.

E 5.

Of one of either sex who dies *leaving neither wife nor husband, nor issue, nor collateral heirs, as in E 1, nor half brothers nor their issue, as in E 2*, BUT A FATHER OR MOTHER AS IN E 1, AND UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER.

(1.) To said father or mother, a life estate, as in C 1.

(2.) To each of said uncles or aunts, the share of the fee such would have taken had all the uncles and aunts of the blood of the purchaser been alive at the death of the intestate. See C 5.

(3.) To each class of first cousins, by *representation*, the share of the fee the parent thereof would have taken if living at the death of the intestate. See C 5.

E 6.

Of one of either sex who dies *leaving neither wife nor husband, nor issue, nor collateral heirs, as in E 1, nor half brothers and sisters, nor their issue, as in E 2, nor uncles and aunts, nor first cousins of the blood, as in E 4 and 5*, BUT A FATHER OR MOTHER AS IN E 1, AND DESCENDANTS OF THE SAID UNCLES AND AUNTS OTHER THAN AS ABOVE TO A MORE REMOTE DEGREE THAN AS BEFORESAID.

(1.) To the said father or mother, a life estate, as in C 1.

(2.) To the said descendants, *per capita*, the fee, as in C 6.

E 7.

Of one of either sex who dies *leaving neither wife nor husband, nor issue, nor descendant in any degree of the grandparent, the purchaser, from whom the estate descended*, BUT A FATHER OR MOTHER, AND COLLATERAL HEIRS, OR KIN OF SUCH GRANDPARENT, THE PURCHASER.

(1.) To the said father or mother, a life estate, as in C 1.

(2.) To the said collateral heirs, or kin of the grandparent, the purchaser, in the manner set forth in C 1 to 7.

E 8.

Of one of either sex who dies *leaving neither wife nor husband, nor issue, nor kindred in any degree of the blood of the grandparent from whom the estate descended*, BUT A FATHER OR A MOTHER, AS IN E 1, WHO IS NOT OF THE BLOOD OF THE PURCHASER.

(1.) To such father or mother, the fee as next of kin by the Civil Law, as in D 14.

And so on, as in C 9 and 10.

F 1.

Of a married intestate who dies *leaving no issue of a deceased child*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN D 1, AND CHILDREN, AS IN D 1.

If Intestate be a Male.

(1.) To the widow, her dower of one-third, as in D 1.

(2.) To the children, *per capita*, as in D 1.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in D 1.

(2.) To the children, *per capita*, the fee, as in D 1.

F 2.

Of a married intestate who dies *leaving no children, nor descendants of a deceased grandchild*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN E 1, AND GRANDCHILDREN.

If Intestate be a Male.

(1.) To the widow, her dower of one-third, as in B 1.

(2.) To the grandchildren, *per capita*, the fee, as in B 2.

F 3.

Of a married intestate who dies *leaving no children*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN E 1, AND DESCENDANTS OTHER THAN AS ABOVE, ALL IN THE SAME DEGREE OF CONSANGUINITY.

If Intestate be a Male.

- (1.) To the widow, her dower of one-third, as in B 1.
- (2.) To the said descendants, *per capita*, the fee, as in B 3.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 1.
- (2.) To the said descendants, *per capita*, the fee.

F 4.

Of a married intestate who dies *leaving* A SPOUSE, A FATHER OR MOTHER, AS IN E 1, AND DESCENDANTS IN DIFFERENT DEGREES OF CONSANGUINITY, THE MORE REMOTE OF THEM BEING THE ISSUE OF A DECEASED CHILD, GRANDCHILD, OR OTHER DESCENDANT.

If Intestate be a Male.

- (1.) To the widow, her dower of one-third, as in B 1.
- (2.) To the said descendants, the fee, as in B 4.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 1.
- (2.) To the said descendants, the fee, as in B 4.

F 5.

Of a married intestate who dies *leaving no issue*, BUT A SPOUSE, A FATHER OR MOTHER AS IN E 1, AND COLLATERAL HEIRS AS IN B 5.

If Intestate be a Male.

- (1.) To the widow, her life estate of one-half, as in B 5.
- (2.) To the surviving father or mother, a life estate, as in B 5.
- (3.) To the collateral heirs, the fee, as in B 5.

If Intestate be a Female.

- (1.) To the widower, his estate by the courtesy, as in B 5.
- (2.) To the surviving father or mother, the possibility of a life estate, as in B 5.
- (3.) To the collateral heirs, the fee, as in B 5.

F 6.

Of a married intestate who dies *leaving no issue, no collateral heirs as in B 5, and no first cousins, children of deceased uncles and aunts of the blood of the purchaser*, BUT A SPOUSE, A FATHER OR MOTHER AS IN E 1, AND HALF BROTHERS AND SISTERS, CHILDREN OF THE SURVIVING FATHER OR MOTHER BY ANOTHER MARRIAGE WHO ARE NOT OF THE BLOOD OF THE PURCHASER, AND UNCLES AND AUNTS, CHILDREN OF THE PURCHASER, AND UNCLES AND AUNTS, BROTHERS AND SISTERS OF THE SURVIVING FATHER OR MOTHER.

If Intestate be a Male.

- (1.) To the widow, her estate for life of one-half, as in B 5.
- (2.) To the surviving father or mother, a life estate, as in B 5.
- (3.) To the half brothers and sisters aforesaid, nothing.
- (4.) To the said uncles and aunts, children of the purchaser, *per capita*, the fee, as in D 7.
- (5.) To the uncles and aunts, not children of the purchaser, nothing.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 5.

(2.) To the surviving father or mother, the possibility of a life estate, as in B 5.

(3.) To the half brothers and sisters aforesaid, nothing.

(4.) To the said uncles and aunts, children of the purchaser, *per capita*, the fee, as in D 7.

(5.) To the said uncles and aunts, not children of the purchaser, nothing.

F 7.

Of a married intestate who dies *leaving no issue, no collateral heirs*, BUT A SPOUSE, A FATHER OR MOTHER NOT OF THE BLOOD, AND HALF BROTHERS, CHILDREN OF THE SURVIVING FATHER OR MOTHER BY ANOTHER MARRIAGE WITH ONE NOT OF THE BLOOD OF THE PURCHASER, AND UNCLES AND AUNTS, CHILDREN OF THE PURCHASER, AND UNCLES AND AUNTS, BROTHERS AND SISTERS OF THE SURVIVING FATHER OR MOTHER, AND FIRST COUSINS, CHILDREN OF DECEASED UNCLES AND AUNTS OF THE BLOOD OF THE PURCHASER.

If Intestate be a Male.

(1.) To the widow, her estate for life of one-half, as in B 5.

(2.) To the surviving father or mother, a life estate, as in B 5.

(3.) To the said half brothers and sisters, nothing.

(4.) To each of the said uncles and aunts, children of the purchaser, such share of the fee as they would have taken had all the uncles and aunts, children of the purchaser, and *deceased leaving issue*, been alive at the death of the intestate. See C 5.

(5.) To the said uncles and aunts, not children of the purchaser, nothing.

(6.) To each class of the said first cousins (amongst the members of such class), such share as the parent thereof would have taken if living. See C 5.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 5.

(2.) To the surviving father or mother, the possibility of a life estate, as in B 5.

(3.) To the said half brothers and sisters, nothing.

(4.) To the said uncles and aunts, children of the purchaser, as above stated.

(5.) To the said uncles and aunts, not children of the purchaser, nothing.

(6.) To each class of the said first cousins, as above stated.

F 8.

Of a married intestate who dies *leaving no issue, no collateral heirs, no uncles, nor aunts, nor first cousins of the blood of the purchaser*, BUT A SPOUSE, A FATHER OR MOTHER, AS IN E 1, AND NEXT OF KIN OF THE BLOOD OF THE PURCHASER IN A MORE REMOTE DEGREE THAN AS BEFORE SAID.

If Intestate be a Male.

(1.) To the widow, her life estate of one-half, as in B 5.

(2.) To the surviving father or mother, a life estate, as in B 5.

(3.) To the said next of kin, the fee, *per capita* : Brenneman's Appeal, 4 Wright, 415.

If Intestate be a Female.

(1.) To the husband, his estate by the courtesy.

(2.) To the surviving father or mother, the possibility of a life estate.

(3.) To the said next of kin, *per capita*, the fee. See section 7 of Act of 1833, *supra*, 89.

F 9.

Of a married intestate who dies *leaving no issue, no collateral heirs, nor kin of the blood of the purchaser*, BUT A SPOUSE, A FATHER OR MOTHER AS IN E 1, AND HALF BROTHERS AND SISTERS, CHILDREN OF THE SURVIVING FATHER OR MOTHER BY A MARRIAGE WITH ONE NOT OF THE BLOOD OF THE PURCHASER.

If Intestate be a Male.

(1.) To the surviving father or mother, a life estate of one-half.

(2.) To the widow, the fee, under the 10th section of the Act of 1833.

(3.) To the said half brothers and their issue, nothing, as they are barred by the 9th section of the Act of 1833.

If Intestate be a Female.

(1.) To the surviving father or mother, a life estate of one-half.

(2.) To the widower, the fee, under the 10th section of the Act of 1833.

(3.) To the said half brothers and sisters, nothing, as above said.

F 10.

Of a married intestate who dies *leaving no issue, nor collateral heirs*, BUT A SPOUSE, AND A FATHER OR MOTHER, OF THE BLOOD OF THE PURCHASER.

If Intestate be a Male.

(1.) To the widow, a life estate of one-half.

(2.) To the said father or mother, the fee, under the 5th section of the Act of 1833.

If Intestate be a Female.

(1.) To the widower, his estate by the courtesy, as in B 5.

(2.) To the said father or mother, the fee, as beforesaid.

F 11.

Of a married intestate who dies *leaving no issue, nor kin of the blood of the purchaser, nor half brothers and sisters not of the blood of the purchaser, nor father nor mother, as aforesaid*, BUT A SPOUSE AND NEXT OF KIN BY THE CIVIL LAW IN A MORE REMOTE DEGREE.

If Intestate be a Male.

(1.) To the widow, the fee, under the 10th section of the Act of 1833.

(2.) To such next of kin, nothing.

If Intestate be a Female.

(1.) To the widower, the fee, under the 10th section of the Act of 1833.

(2.) To the said next of kin, nothing.

REMARKS.

Referred to on pages 142, 143, 149, 154, 156, 160, 164, 167, 171, 172, 173, 174.

There is now before the legislature of Pennsylvania the following bill, which will modify the provisions of the 2d section of the Act of 27th April, 1855, to the extent that when one dies intestate, leaving as his heirs grandnephews or first cousins (who would, under existing laws, each class

thereof, inherit amongst them the share the parent of such class would have taken had such parent been alive at the time of the death of the intestate), the same shall take the inheritance amongst them *per capita*, as is at present the law in regard to grandchildren or nephews.

There is but little doubt as regards the passage of the bill which is considered by many as desirable. But the writer would prefer a bill which would have the reverse effect, which would have made lineal and collateral descendants in the same degree of consanguinity take *per stirpes* the share, each class thereof, the parents of such class would have been entitled to, if such had been alive at the death of the intestate.

BILL PROFFERED IN 1885.

AN ACT

providing for the manner in which estates of intestates shall be distributed where the distributees stand in the same degree of consanguinity to the intestate.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same,* That, whenever by the provisions of the intestate laws of this Commonwealth it is directed that real and personal estates shall descend to or be distributed among several persons, whether lineal or collateral heirs, or kindred standing in the same degree of consanguinity to the intestate, if there shall be only one of such degree he shall take the whole of such estate, and if there be more than one they shall take in equal shares, and if real estate, shall hold the same as tenants in common.

SECTION 2. All acts or parts of acts inconsistent herewith be and the same are hereby repealed.

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